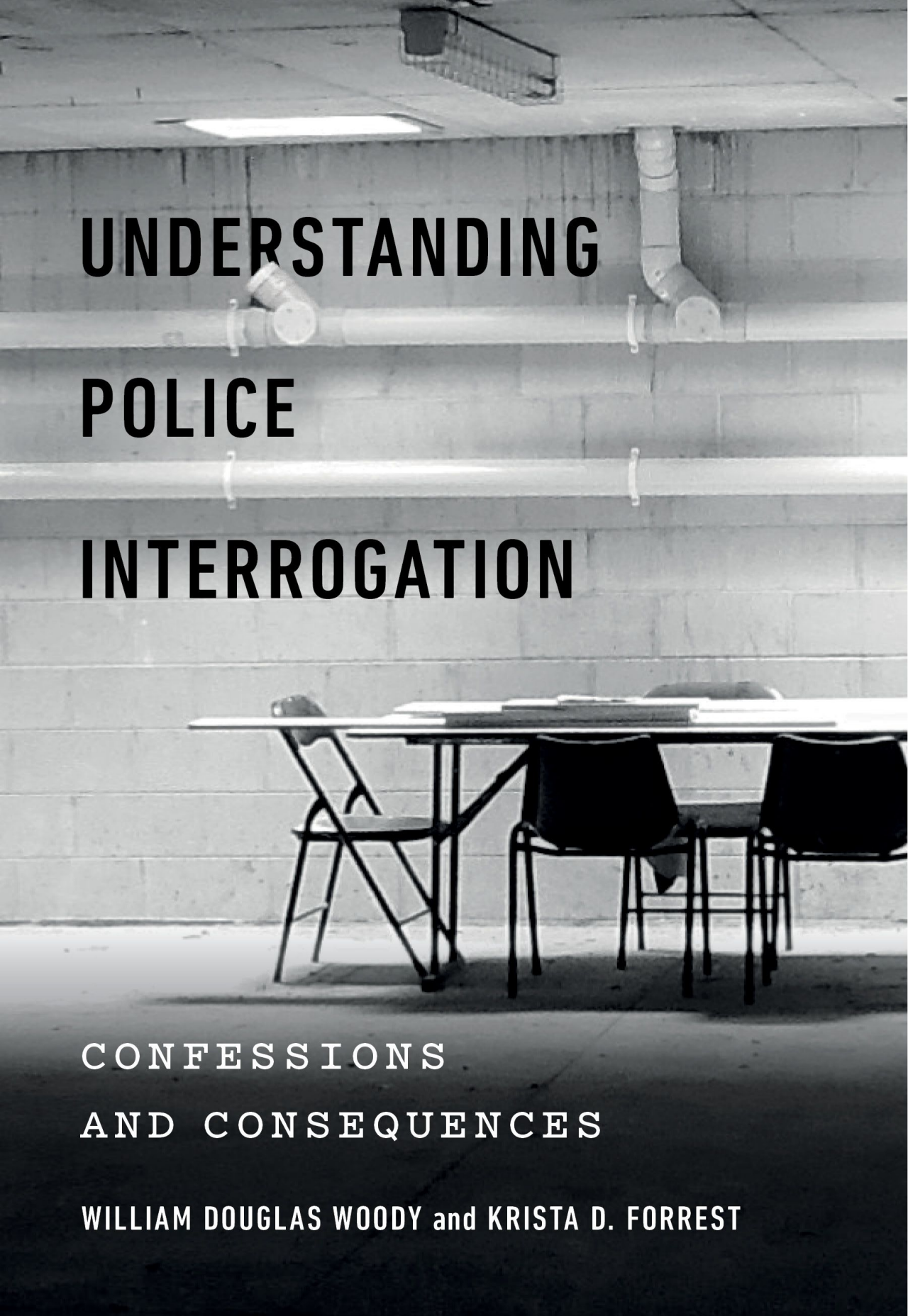

UNDERSTANDING POLICE INTERROGATION

CONFESSIONS AND CONSEQUENCES

WILLIAM DOUGLAS WOODY and KRISTA D. FORREST

UNDERSTANDING POLICE INTERROGATION

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Understanding Police Interrogation: Confessions and Consequences
William Douglas Woody and Krista D. Forrest

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Foreword by Edie Greene

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Also available as an ebook

To Lisa, Nate, and Ian Woody

and

Floyd and Sallie Forrest

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FOREWORD

EDIE GREENE

Most people are convinced they would not confess to a crime they did not commit. Most detectives are certain they do not extract false confessions from interviewees. Most prosecutors are sure they do not offer or accept guilty pleas from innocent suspects. Most judges are confident they would not admit a false confession into the evidence presented at trial. And most jurors would have little reason to doubt evidence of a defendant's confession. After all, why would someone confess to a crime they did not commit?

So how, then, did we end up with the West Memphis Three, the Tucson (and Norfolk) Four, the Central Park Five, and the Beatrice Six—innocents all—to say nothing of the scores of individuals and duos whose false confessions to police led to their wrongful convictions and, in some cases, decades of incarceration? This question is at the core of *Understanding Police Interrogation.* William Douglas Woody and Krista D. Forrest frame an answer around the widely understood concept of the totality of the circumstances, which, in the law, values an "all things considered" approach over rigid rules and narrowly framed inquiries (*Florida v. Harris,* 2013[1]). The authors have focused a wide lens on these issues. They offer a sweeping model that encompasses social, cognitive, cultural, legal, and other processes of interrogation, as well as interactions among those factors, to explain why people confess to crimes they did not commit, why police believe those false confessions, and why juries rely on them to convict innocent defendants. False confessions emerge from many complex and interacting factors—from the totality of the circumstances.

The jumping-off point for their model is society's perspectives on confession evidence, gleaned from popular media and informed, increasingly, by scientific research. Woody and Forrest then explore the

ways that police officers' predispositions, including the assumption of guilt and confirmation bias, as well as suspects' characteristics such as youthfulness, mental illness, cognitive disabilities, and traumatic experiences can shape interrogations. They also describe the deceptive tactics commonly used in police interrogations and courts' responses to those strategies. Throughout these chapters, they are attentive to the myriad interactions among the suspect, interrogator, and interrogation context in leading to false confessions, and they present useful graphical representations of their model at each stage of elaboration.

Are there ways to remedy these errors? Woody and Forrest explore various possibilities within their broad totality of the circumstances framework: reframing societal perspectives by educating the public on myths related to police interrogations; providing continuing education on investigatory biases for interviewers, attorneys, and judges; requiring video-recording of entire police interviews; protecting vulnerable suspects; and reforming interrogation tactics to reduce deception and increase the use of non-confrontational strategies. Their expansive lens also focuses on legal changes, some that require legislative actions and others that can be accomplished by judicial fiat. Ideas for ongoing scholarly work are presented as well.

Throughout the book, the authors provide detailed analyses of both well-documented and relatively obscure cases of false confession. Regardless of the cases' notoriety, the totality of the circumstances present is remarkably similar between cases. In crafting and drawing out their model, Woody and Forrest have provided a perspective that can help all of us understand decisions to confess falsely and the effects of those confessions on police interviewers, attorneys, judges, and jurors—indeed, on the legitimacy of the criminal justice system as a whole.

Introduction

What drives suspects to confess during police interrogation? In particular, what drives people to confess despite the overwhelming likelihood of negative personal consequences, such as long-term incarceration? Moreover, why do some people falsely confess to serious crimes, despite both the likelihood of severe negative consequences *and* their actual innocence? How can we explain these phenomena?

Too often, observers seeking simple answers endorse the mistaken belief that only people facing torture or people with severe mental illnesses or cognitive disabilities would confess falsely, a belief that the prominent legal scholar Richard A. Leo (2001) calls the "myth of psychological interrogation" (p. 37). If we accept this common but erroneous belief, we may raise important concerns about defendants with these characteristics, but we would miss the risks that result from additional factors. Examples include investigators' biases about guilt, cultural views about race and crime that lead observers to view some suspects as more likely than others to be guilty, and the powerful effects of police deception on suspects, each of which can influence the nature of an interrogation and may lead to circumstances resulting in a false confession.

Even after considering a wide range of factors about the suspect, the investigators, the specific interrogation tactics, and many details surrounding the interrogation (e.g., length of questioning, emotional intensity of the interrogation, state of the suspect regarding hunger, thirst, fatigue, or withdrawal), we may fail to see the larger picture. That larger picture includes our history of policing, changing culture and practices for police interrogators, the slow emergence of legal restraints on police interrogation tactics, suspects' limited and generally erroneous understanding of *Miranda* warnings, and legal assumptions about the effectiveness of protections provided by voluntariness hearings, jurors, and trial and appellate judges. Without this view of the totality of the circumstances, observers may struggle to understand the cultural, social,

cognitive, and other processes in interrogation and in suspects' decisions to confess. Just as judges must evaluate the totality of the circumstances to decide whether to admit confession evidence at trial, an understanding of the totality of the circumstances is essential to grasp the influence of interrogation and the consequences of the resulting confessions, particularly coerced or false confessions.

This book considers police interrogation and confession very broadly, as it seeks to clarify the totality of the circumstances surrounding interrogation and confession. We have three primary goals for this book. First, we seek to educate readers about the processes of police interrogation and confession in the United States. To do so we examine many psychological, legal, cultural, personal, and other factors that lead to greater likelihood of confessions, including coerced or false confessions. Second, we address the interactions of these factors. For example, we explore the growing field of research evaluating the impacts of confessions on other evidence: a confession can make weak evidence look stronger, lead experts astray, and cause other unintended outcomes. Third, we emphasize the totality of the circumstances. Legal precedent requires judges to consider the totality of the circumstances very broadly, including potential limitations of the defendant (e.g., cognitive disability, mental illness, fatigue, addiction), investigatory biases (e.g., the degree to which interrogators believed the suspect was guilty and whether the confession may make other evidence appear more condemning), and interrogation tactics (e.g., presence and form of deception, time of interrogation) as well as other factors. Throughout this book, we review individual factors and their interactions as we seek fundamentally to reveal the larger and more complex picture. To illustrate these goals, we introduce two false confession cases in the United States: the false confessions, erroneous convictions, and near-executions of Stephen and Jesse Boorn in the early 1800s and the recent false confession, erroneous conviction, and subsequent exoneration of Jeffrey Deskovic. These two false confession cases present very different fact patterns, but an examination of the totality of the circumstances reveals important similarities, even though substantial cultural, legal, and policing changes emerged across the nearly two centuries that separate these crimes, false confessions, and mistaken convictions.

The Boorn Brothers

In 1812, Stephen and Jesse Boorn, along with their sister Sally, had earned reputations as reckless individuals, and these reputations did not fade when Sally married Russell Colvin. Colvin eventually lost his farm, and the couple moved in with her brothers on the Boorn farm (Borchard, 1932; Wilhelm, 2010). An eyewitness reported that the Boorn brothers argued intensely with Colvin just before Colvin mysteriously disappeared. Seven years later, an uncle of the Boorns had a dream in which Colvin appeared, announced that he had been murdered, and informed the dreamer where to find his remains. Based on this widely publicized dream (Warden, 2006), Jesse Boorn was arrested. An initial search failed to reveal evidence, but a more extensive search revealed bones that the court erroneously declared to be human. Facing likely execution, Jesse claimed that his brother, Stephen, had confessed to killing Colvin and that Jesse helped hide Colvin's body (Warden, 2006). After Stephen's subsequent arrest, a jailhouse informant facing counterfeiting charges reported that, while in custody, Jesse had confessed. The informant received leniency in exchange for this testimony (Borchard, 1932), even though differences existed between this supposed confession and Jesse's original confession and despite the widespread realization that the bones, the only physical evidence in the case, were not human. When authorities arrested Stephen based on Jesse's confession, Jesse immediately recanted, claiming he had falsely reported Stephen's confession to save his own life. In custody, Stephen confessed to the murder, claiming he had killed Colvin in self-defense.

Based on these confessions, the jury sentenced both brothers to death. As one observer stated, "the court's biggest problem . . . was finding a jury of twelve men who were not already convinced of [their] guilt" (Wilhelm, 2010, ¶13). Due to Jesse's claim that Stephen was the killer, the court reduced Jesse's sentence to life in prison.

After the trial, the Boorn brothers began arguing that Colvin was still alive. The Boorns' attorneys, in spite of their own belief in the Boorns' guilt, ran a newspaper advertisement seeking information about Colvin. A reader recognized Colvin as a farmhand living in New Jersey, but Colvin did not want to return to Vermont, even to save his brothers-in-law from execution. Returning Colvin to Vermont required extensive

deception, including hiring an attractive woman who enticed Colvin to travel to New York City as well as others who convinced Colvin to take a roundabout route back to New Jersey. Just over a month before Stephen's scheduled execution, Colvin emerged from a stagecoach in front of a crowd, and the case collapsed.[1] Later observers used this case to argue for caution regarding confessions (Anonymous, 1820; Greenleaf, 1860), and legal scholar David A. Moran (1993) argues that this case promoted the wider acceptance of the *corpus delicti* rule, which requires the prosecution to produce evidence (in this case, a body) that a crime was committed, as an important legal protection for suspects who confess.

Jeffrey Deskovic

In 1989, nearly two centuries after the Boorns' false confessions, an unknown assailant sexually assaulted and murdered 15-year-old Angela Correa. Police identified 16-year-old Jeffrey Deskovic as a suspect for three reasons. First, he had been late to school the day after the crime; second, the police believed he appeared excessively distressed about the death of his classmate; and third, he told police that he was eager to assist with the case (Innocence Project, 2018a). Police interviewed Deskovic extensively and asked him to complete a polygraph examination. Police provided Deskovic with large amounts of coffee but no food, and after several hours of polygraph testing Deskovic crawled under the table crying and confessed to the crime. After the confession but before trial, DNA analysis revealed that the biological evidence found on the victim did not match Deskovic. The prosecutors, aware of this dilemma, developed a theory allowing them to retain their claim that Deskovic was the lone perpetrator. They argued that the existing DNA evidence was the result of the victim having consensual sex with an unknown individual prior to being assaulted by Deskovic. The same prosecutors remained unable to explain how Deskovic left no evidence (Innocence Project, 2018a; for similar cases see Martin, 2011; Stroh & Vigoda, 2002). The jury convicted Deskovic, who spent 16 years in prison. In 2006, the court dismissed his conviction due to his actual innocence (Innocence Project, 2018a).

Steven Cunningham, the actual perpetrator, remained free throughout much of Deskovic's incarceration. The DNA from the Deskovic case

eventually led investigators to Cunningham, but it was 2006 before investigators entered the evidence into the New York State DNA database of people convicted of felonies (Innocence Project, 2018a). Tragically, Cunningham had committed a second murder during Deskovic's incarceration.

Many factors contributed to Deskovic's wrongful conviction. A Westchester County report on the case found evidence of tunnel vision (i.e., an excessively narrow focus on Deskovic that led police to ignore other suspects and exculpatory evidence), limited and selective recording of the interrogation, Deskovic's statements, and the confession, and other serious problems (Snyder, McQuillan, Murphy, & Joselson, 2007). Additionally, the police, convinced of Deskovic's guilt, used the polygraph examination not as a truth detection tool but as an interrogation tactic and engaged in other misconduct (Bandler, 2014a, 2014b).

The Boorn and Deskovic cases occurred at very different times in the legal history of the United States, and there are many important differences. Perhaps the most striking difference between these cases is the nature of the alleged crimes. Colvin remained unharmed, whereas the assault and murder to which Deskovic confessed was real. Other important differences reveal long-term legal changes. Unlike the Deskovic case, in the Boorn case, observers—including jurors—viewed a relative's dream as legal evidence of a crime. At the time, definitive evidence of a crime was not required before trial, and services such as a civilian police force, reliable forensic investigations, and adequate representation by counsel remained unavailable. Despite these differences, similarities reveal consistent difficulties.

In both cases, investigators quickly identified suspects and then failed to consider other options appropriately. In both cases, evidence that appeared to indicate guilt (the bones in the Boorn case and the emotional response of Deskovic) was not reliable but was believed to be so, even in the presence of contradictory evidence. In both cases, confessions emerged when the confessors believed that their situation was hopeless and conviction appeared inevitable. Perhaps the most striking similarity relates to the juries in these cases. Both juries faced evidence that was incompatible with the confession (the animal bones for the Boorns and the DNA exoneration for Deskovic), and both juries convicted the defendants despite the exculpatory evidence. Despite profound historical

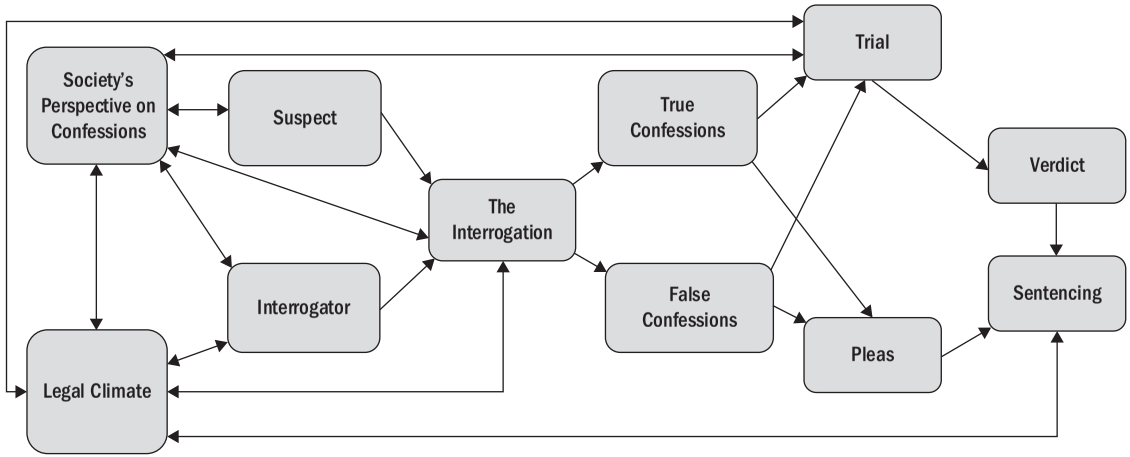

Figure I.1. The Totality of the Circumstances Approach to Understanding Confession

changes, the legal and psychological factors related to false confessions and to the evaluation of this evidence remained largely unchanged. Even though differences existed across history and case details, the totality of the circumstances across these cases shows remarkable similarities regarding both the decisions to confess falsely and the effects of these confessions on jurors, courts, and other observers.

The Totality of the Circumstances

Throughout this book we engage the totality of the circumstances model and explore how different components of this model interact with others to influence the police interrogation process and its results. Figure 1 represents the totality of the circumstances model. When a chapter addresses a particular component, we will expand the box to include examples from that chapter. In the last chapter, when we discuss recommendations for reform, we will frame those recommendations within this model as well.

Overview

We begin with the history of civilian policing and interrogation in the United States. We return to these historical perspectives throughout the book. Next, we examine typical practices in police interrogation, including deceptive practices. We then turn to types and causes of false confessions, followed by examination of the costs and consequences of deception, coercion, and false confession. The next two chapters explore expert testimony and other safeguards against coercion. We conclude the volume with recommendations for reform, in particular advocating for the development of new interrogation techniques devoid of deception and coercion.

1

Historical Developments in Policing and the Practice of Interrogation

The Emergence of Civilian Policing

The field of criminal justice has engaged in relatively little historical scholarship until recently (Conley, 1977), and the history of the field remains underemphasized in criminal justice education (Jones, 1994), though interest in the history of the field appears to be growing (see for example Oliver & Hilgenberg, 2006; Roth, 2005). Here, we provide a concise review of the history of policing, with particular emphasis on its emergence in Britain and the United States, before moving directly to the history of police interrogation. This historical review leads to the current totality of the circumstances surrounding police interrogation and confession. How did we establish our legal expectations, interrogation tactics, and current culture of confrontational and deceptive interrogation in police departments in the United States?

The earliest forms of civilian policing in Western culture emerged in Rome, as transitions to a powerful centralized authority supplanted family authority for an increasingly diverse population (Nisbet, 1964). Just over 2000 years ago, the Emperor Augustus brought soldiers into Rome to protect the emperor and his assets, and this Praetorian Guard, with their military training, became the first civilian police force (Germann, Day, & Gallati, 1988). Although Roman systems of civilian policing collapsed with the fall of Rome, other urban police forces emerged prior to the British system in the early 1800s, which would become the primary model for civilian policing in the United States. For example, in the Middle Ages, urban patrols organized by wealthy families provided some security in trade-focused Italian cities (Johnson, 1988).

Prior to the French Revolution, a national police system emerged in France, including a centralized police force in Paris as well as a mounted

force to patrol the roads (Elmsley, 1984). The French system placed more emphasis on protecting royalty from insurrection than on preventing crime or protecting typical citizens. After the French Revolution, the new leadership largely reinvented the police force but with even more emphasis on protecting the state through surveillance of its citizens (Elmsley, 1984). The British observed the developments in France as they considered their own civilian police, and the French model provided cautions about the importance of balancing public safety with civil liberties.

In the late 1700s and early 1800s, as the French wrestled with questions about the political nature of the national police, the British largely rejected an organized civilian police force because of its perceived incompatibility with the British emphasis on individual liberties (Elmsley, 1984). Yet a series of riots across several years, including the anti-machinery Luddite Riots (Lyman, 1964), and two brutal mass murders in 1811 increased popular support for civilian policing in the growing metropolis of London (Elmsley, 1984).

A prominent leader of the British movement for civilian policing in London was Sir Robert Peel, who served as Home Secretary from 1828 to 1830. He stepped into the British legal debates about punishment. Reformers sought to moderate British law in order to reduce reliance on capital punishment and other physical punishments (Earle, 1896). As one reform-minded lawmaker lamented, British law listed 223 separate capital crimes (Elmsley, 1984). Rather than capital punishment, Peel argued that milder but consistent punishments for less severe offenses could be administered by impartial and reliable civilian police forces. He proposed that these changes could also prevent crime. Finally, in 1829, 44 years after the first legislative attempt to create a London police force, the Metropolitan Police Act established civilian policing in London.

During his efforts to introduce a civilian police force, Peel faced many obstacles, primarily concerns that a civilian police force would not join citizens as members of a shared community but instead would act as an occupying military force. Concerns about the political activities of the French police did not reduce these fears (Elmsley, 1984). Peel addressed these difficulties with a series of important steps. First, he emphasized to lawmakers, the public, and his officers that the London police force existed to work for rather than against the citizens of London. Second,

he implemented a series of hiring guidelines and policies to further differentiate the civilian police living among the local citizens from occupying military forces. He established blue as the police uniform color, which distinguished civilian police officers from British soldiers, who wore their distinctive red. Also, police, unlike soldiers, did not generally carry lethal weapons. Peel set high hiring standards and established pay rates similar to those for skilled workers. This increased the likelihood that police officers would be hired from the working-class communities in which they lived, which in turn ensured that officers would not view themselves as better than the citizens in their districts (Critchley, 1972). Throughout all of these actions, Peel emphasized "the essential civilian character of the police . . . public service, self-control, and the importance of gaining the public's trust" (Lyman, 1964, p. 153). Despite these initial efforts, the London police (called Bobbies, after the shortened form of Robert [Peel]) required decades to gain widespread support and acceptance from the London populace. This model of policing formed the primary basis for the emergence of civilian policing in the United States, and these values continue to shape policing and police interrogation today.

The Emergence of Policing in the United States

Civilian policing did not exist in the United States in the early 1800s, and local courts often conducted their own investigations, which generally appear very limited to twenty-first-century observers. As the former British colonies grew in size and the cities grew in population density, Americans faced the same problems that inspired civilian policing in Britain, but American cities were able to observe the London model and to adapt it for the American experience. In densely populated Northeastern cities, police forces emerged early, for example in 1845 in New York City. In the Southern United States, however, additional pressures drove the emergence of civilian policing.

An underemphasized historical aspect of the development of policing in the United States was the formation and actions of slave patrols. Prior to the Civil War, police upheld racially biased laws concerning slavery and the treatment of runaway slaves. Citizens who were Black and free also risked apprehension by slave patrols (Reichel, 1988).

Criminal justice scholars K. B. Turner, David Giacopassi, and Margaret Vandiver (2006) argue that "a legally sanctioned law enforcement system existed in America before the Civil War" and that "the slave patrol should be considered a forerunner of modern American Law enforcement" (p. 186). These patrols not only had institutional and public support, they also promoted the interests of White citizens and took only limited roles in assisting free Black citizens or people who were enslaved. This dedication was particularly salient in jurisdictions in which whites formed a minority (Turner et al., 2006; Reichel, 1988). Later police supported segregation and discrimination in the Jim Crow South as well as in the sundown towns (i.e., the hundreds of documented communities that became exclusively White by law) and highly segregated cities of the North (Loewen, 2005; Wilkerson, 2010; Williams & Murphy, 1990). This history informs current discussions of racial biases in the criminal justice system in general and in interrogation in particular. These explicit racial biases contribute to the totality of the circumstances faced by suspects today, particularly those who are not European American. We will return to these issues throughout this book.

Established in the Northeast and then spreading throughout the United States we find what criminal justice scholars George L. Kelling and Mark H. Moore (1988) called the "political era" (p. 2) of policing. From the late 1800s until the start of the Reform Era in the 1930s, the political nature of police selection, retention, and administration heavily affected policing in American cities. New York City provides a typical example. With a weak centralized police administration in the city, ward (i.e., voting district) leaders nominated officers who lived in the wards they would patrol, and mayors approved the officers. With these political selection processes, demographic characteristics of officers (e.g., race, national origin, political party) typically reflected the city neighborhoods in which they lived, and they provided a wide range of social services, including public food and housing assistance for indigent citizens in their wards (Oliver, 2006). As noted by Kelling and Moore (1988), departments invited direct influence on police operations from both citizens (who could directly ask officers for services or to solve crimes) and local elected leaders, and the political nature of police administration set expectations that policing should be acceptable to local politicians as well as to local constituents. Crime-solving tools and methods

remained limited, and the foot patrol dominated police activities. This reliance on the foot patrol fit the emphasis on police officers as local officials who provided services directly to local leaders and to the public, who could readily access officers in their own neighborhoods (Kelling & Moore, 1988). An important corollary of these factors, in Northern as well as Southern cities, remained clearly tied to race: only voters (typically White community members) could select local leaders and, in turn, these leaders selected law enforcement officers and community policing methods advantageous to their agendas (Williams & Murphy, 1990). This local control thus brought important negative consequences that would inspire those who sought to reform the system.

Politically motivated policing also led to the expansion of private police and investigative options. For example, wealthy individuals who suffered losses through crime could choose what attorney Theodore M. Becker (1974) called "self-help once removed" (p. 445) to resolve crimes. Rather than take matters into their own hands (i.e., "direct self-help," p. 445) or appeal to police, individuals with substantial resources could rely on private investigators such as the Pinkertons. The political aspects of local policing led many institutions (e.g., mines, factories, railroads, and other corporations) to hire and administer their own police forces. This action tended to further the goals of the owners, often explicitly against unionized workers (Johnson, 2015). For example, in 1892, when the Amalgamated Association of Iron and Steel Workers went on strike at Andrew Carnegie's Homestead steel mill, Carnegie and his partner brought in not police, other local law enforcement, or federal law enforcement, but 300 Pinkerton detectives to protect the strikebreakers. The local sheriff, in support of the striking workers, refused to deputize the Pinkertons (Kahan, 2014). When the conflict between the union members and the Pinkertons escalated into a pitched street battle won decisively by the workers, the state of Pennsylvania sent the National Guard to take control of the town and put down the strike. These and similar events reveal the commitment of police to their employers over the general populace. Private policing, although powerful, was an option available only to wealthy American individuals and corporations and thus reflected the goals of the wealthy.

Politically motivated policing contributed to other negative outcomes. As discussed previously, police officers largely served at the discretion

of local leaders, who in turn distributed police jobs as patronage. Police then supported political leaders broadly, sometimes even protecting the illegal activities of these leaders and allies or intimidating citizens who appeared likely to vote for opposing candidates (Fogelson, 1977; Bettman, 1974). Additionally, because officers remained tied to a political leader, election of new local leadership routinely led to mass firings and hirings of police in order to establish departments dedicated to the current political leader's agenda. Officers functioned with direct political oversight, but little oversight from courts, journalists, the public, or any centralized law enforcement body, restraints that would emerge later. At this time, becoming a police officer required only a political appointment rather than formal education, specialized training, and rigorous hiring procedures, and police departments remained rife with corruption (Kelling & Moore, 1988; Bettman, 1974). Because police tenures did not outlast political changes, individual officers had wide discretion to arrest suspects, to intimidate or harass citizens, or to target outsiders, strangers, or members of devalued racial or immigrant groups, and to use a wide range of tactics, including physical coercion, against potential suspects during interrogations (Fogelson, 1977; Leo, 1992). As noted by criminal justice scholar Willard M. Oliver (2006), policing in the early twentieth century "was largely corrupt and often very brutal" (p. 21). The public typically viewed the police with mistrust, perhaps unsurprisingly given the nature of policing at this time. Citizens often regarded the police as a last resort; a common slang phrase was "our last prop is the cop" (Bettman, 1974, p. 93). These political processes not only influenced who became police officers but how those officers did their jobs, with political connections directly affecting the practice of interrogation. Once law enforcement became less political, reforms in general policing and specific interrogation techniques evolved in the mid-twentieth century.

Police Interrogation in the Political Era

Police interrogation in the political era reflected the characteristics of policing of that time. Subject to limited oversight, individual officers had tremendous latitude to choose interrogation methods (Leo, 1992; Woody, 2019). Typical methods found in police departments across the United States may shock today's readers. As Leo (1992) describes,

"American police routinely beat, tortured, and threatened criminal suspects in order to extract confessions of guilt, sometimes employing methods that left external signs of abuse, but more commonly using physical force in ways that did not" (p. 38). Into the 1930s, typical police interrogations included tactics such as simulated or controlled asphyxiation (including waterboarding). These same strategies now generate extensive controversy and condemnation when used against potential terrorists (Senate Select Committee on Intelligence, 2012; Brennan et al., 2014; Hoffman et al., 2015). A collection of interrogation techniques called "the third degree" (Leo, 1992, p. 38; Kidd, 1940, p. 45), and defined as "nothing more than torture" (Kidd, 1940, p. 45), included both physical torture (e.g., from beatings) and mental torture (e.g., from holding a suspect indefinitely without charge), often applied in a wide range of creative ways.

Leo (1992) provides a "typology of coercive interrogation" (p. 38) in which he identifies six general categories of abuse that constituted the third degree as used in police departments across the United States in the early part of the twentieth century. All of these techniques occurred during custody, involved physical and/or psychological distress, and were intended to generate admissions or confessions. Leo opens with a discussion of "brute physical force," including beatings with tools (e.g., rubber hoses, leather straps, brass knuckles, etc.) or bare hands, simulated hangings, and other "routine and systematic" approaches to inspire suspects to confess (p. 39). The second category includes physical torture that does not result from beatings, including the sweat box, burns with lit cigars, and the "water cure," now called "waterboarding" (Leo, 1992, pp. 39–40). The third category includes methods of beating that do not leave visible injuries. The fourth category, long detentions without charge or access to legal representation, called "mental torture" in the first police interrogation manual (Kidd, 1940, p. 46), remained widespread at this time. The fifth category targets physical duress, including deprivation of food, water, or sleep, and the sixth category includes explicit threats of further harm for suspects who fail to confess and explicit promises of leniency if the suspect does confess (Leo, 1992). In 1897, the United States Supreme Court had excluded confessions generated by explicit threats and promises (*Bram v. United States*, 1897), but despite this court decision police interrogators continued to rely on these common

tools. Across these categories, Leo noted that the suspects most likely to face coercion included those suspected of severe crimes, repeat offenders who were members of devalued racial or immigrant outgroups, and suspects who questioned the officers' authority.

One source for evidence of the degree to which these tactics "appeared to many as a normal, if not inevitable aspect of policing" (Leo, 1992, p. 48) exists in the early writings about false confession by the pioneering applied psychologist Hugo Münsterberg (1908). Münsterberg reviewed a controversial confession made in Chicago in 1906 by a young man whom today we would likely describe as a person with a cognitive disability (see also Christison, 1907). Münsterberg based his explanation of the false confession on potential self-hypnosis induced by "the flash" that the young man reportedly saw during interrogation (1908, p. 170; Woody, 2016). As a result, according to Münsterberg, the suspect promptly falsely confessed and maintained belief in his false confession until six days before execution. Recent scholars have examined Münsterberg's work, but, similar to Münsterberg, they have focused on larger legal and ethical perspectives or on Münsterberg's explanation related to self-hypnosis rather than the source of the flash as a potential cause of false confession (e.g., Dalby, 2014; Kassin & Gudjonsson, 2004; Kassin et al., 2010; Starr, 2015a). As described by Münsterberg, the flash came from the handgun that the detective pointed directly into the face of the suspect as an explicit and deadly threat to prompt him to confess. It is hard to imagine that legal observers today would fail to raise concerns about an explicit threat of death as a potential cause of false confession (Woody, 2016). At the time, no one did.

We see further evidence of the creative and coercive tactics applied by police interrogators who answered only to political leaders as we review the recommendations authors made in early police interrogation manuals. How did early manuals address the third degree?

One early source is W. R. Kidd (1940), a reformer who wrote the first police interrogation manual and helped to lead law enforcement away from direct coercion. He notes that officers often feel temptation to use the third degree in what he called "hot cases." Kidd's examples of hot cases include investigations in which police surprise a suspect or catch the suspect "red-handed" (1940, pp. 40–43), and he notes that in these cases officers may feel motivated to use physical or psychological

coercion to inspire suspects to confess, perhaps by simply beating the suspect until they confess.[1] He also addresses officers' desires to use the third degree in other cases, even if the suspect has not been caught in the act, and he argues unequivocally that the "third degree should never be used by the police" (p. 46).

More specific insight into the need for reform is provided by criminologist and law professor Fred E. Inbau's (1942) *Lie Detection and Criminal Interrogation* and by the later editions published with polygrapher and interrogation trainer John E. Reid, including *Criminal Interrogation and Confession*, now in its fifth edition (Inbau, Reid, Buckley, & Jayne, 2013). In the early versions of these texts, Inbau and Reid (1967) warn interrogators against some specific behaviors because investigators had used these tactics in the past and, presumably, because investigators continued to employ or at least consider these interrogation tactics at the time. For example, instead of simply encouraging interrogators to refrain from making explicit threats or explicit promises, Inbau and Reid provide specific recommendations against telling a suspect that if he fails to confess he "would be hanged, shot, or delivered to a mob outside the jail" (Inbau & Reid, 1967, p. 188). The authors supported their recommendations regarding what strategies to use and which ones to avoid by citing court cases. For example, they cited *Edwards v. State* (1950) as they cautioned interrogators against tying a "hangman's knot" (Inbau & Reid, 1967, p. 188, ftn. 91) while threatening the defendant with mob violence. Similarly, they warned officers not to extend a false promise "of assistance in the form of bail" money in exchange for a suspect's confession (p. 192, ftn. 111). Twenty-first-century police interrogation instructors no longer need to caution their trainees with these kinds of warnings.[2] Rather, they address how interrogators can use techniques that are effective and yet acceptable in today's interrogation environment.

Drives for Reform of Police and Police Interrogation

Two primary sources drove reforms of policing in general and police interrogation in particular: external pressures, such as formal law enforcement review, journalistic outcry, and the growing willingness of courts to limit police interrogation practices, and internal influences, including from those who train police interrogators. These drives for reform shaped

the initial responses by reformers, the short-term changes in the early twentieth century, and current interrogation law and practice.

External Influences: Legal Investigations

In the late 1920s, President Herbert Hoover named former U.S. Attorney General George W. Wickersham as chair of the National Commission on Law Observance and Law Enforcement. In 1931, the Wickersham Commission released volume 11, the "Report on Lawlessness in Law Enforcement," in a 14-volume series on law enforcement in the United States. The Wickersham Commission Report contained many examples of police misconduct during interrogation and reached the conclusion that the various tactics described previously as the third degree "flourished in most American police departments" (Leo, 1992, p. 38; Keedy, 1937). Police administrators themselves admitted that officers used the third degree and that these tactics appeared harsh and shocking to communities (Chafee, Pollak, & Stern, 1969). Ominously, the Wickersham Commission Report warned of the potential for false confessions, particularly given widespread coercive methods of interrogation.

The Wickersham Commission Report led to additional legal changes. For example, in the 1930s, in his leadership role in the FBI, J. Edgar Hoover publicly rejected the third degree and advocated strongly for scientific approaches to interrogation, which would render the third degree unnecessary (Frank & Frank, 1957; Leo, 2004). In the same decade, to address the typical lack of training for police officers, Hoover initiated national training programs run by the FBI, and he promoted police academies. These approaches allowed the police themselves to become an integral part of these groundbreaking reforms. Perhaps the most important consequence of the Wickersham Commission Report is that the findings provoked a more substantial public outcry that led to greater attitude change across the country than had prior examinations (Leo, 1992; Walker, 1980).

Journalistic Responses

The Wickersham Commission Report was widely disseminated, and journalists further addressed these findings in books, magazines, and

newspapers (Bunn, 2007; Leo, 1992; Thomas & Leo, 2012). Ernest Jerome Hopkins, a journalist, almost immediately disseminated the findings of the Wickersham Commission Report in his popular book *Our Lawless Police* (1931). Hopkins's work publicized flagrant tactics, such as physically attacking a male suspect's testicles, use of drugs expected to function as truth serums, and physical interrogation methods directed specifically at women, such as dragging them by their hair.

Other intense responses from journalists such as Emmanuel Henry Lavine (1930), national newspapers such as *The New Republic* (1924; 1930; Ageloff, 1928) and *The Nation* (1922; 1930), and observers such as law professor Zechariah Chafee, Jr. (1931) raised public awareness (see Bunn, 2007). As noted by criminal justice scholar Samuel Walker (1980), both the Wickersham Commission Report and considerable journalistic interest prompted many legal investigations of police departments and police practices during the 1920s and 1930s.

The Courts

Other instigators of changes in interrogation tactics emerged from court decisions. As noted previously, in *Bram v. United States* (1897), the U.S. Supreme Court drew on the Fifth Amendment protections against self-incrimination and established precedent to reject confessions generated from explicit threats and explicit promises (Wakefield & Underwager, 1998). Despite these limits, in the early 1900s courts and the public still routinely accepted confessions generated by threats and promises or by physical coercion; the case publicized by Münsterberg provides a chilling example. Legal scholar Deborah Young (1996) argues that state courts became more willing to accept confessions induced by police at this time for reasons that remain unclear (although she speculates that courts sought to support emerging police departments in their new roles, which included the wide array of interrogation techniques described previously). Despite this leniency at the state court level, the U.S. Supreme Court began to consider important questions about the acceptability of certain interrogation tactics.

As law enforcement investigations and journalistic concerns grew, courts also set new precedents that limited police interrogation practices. For example, in 1919, police held Ziang Sung Wan incommunicado

and interrogated him for nine days in a hotel before placing him under arrest. He was so physically ill that the jail physician described him as "very weak, very much exhausted, and very much emaciated" (*Ziang Sung Wan v. United States*, 1924, p. 3). Not only did the judge admit his murder confession at trial, but when Ziang Sung Wan appealed on the grounds that police had coerced his confession, the appeals court upheld his conviction. On further appeal, however, the U.S. Supreme Court reversed his conviction due to the coercive nature of the interrogation.

Ziang Sung Wan v. United States (1924), among other cases, set the stage for *Brown et al. v. Mississippi* (1936). Additional details about this case illustrate how accepting courts generally were of harsh interrogation methods in 1934. The details also demonstrate how this decision provided the foundation for later court decisions and for changes in the practice of police interrogation. Four defendants, all of whom were African Americans with limited education, attempted to recant their confessions to a murder. A deputy sheriff, accompanied by individuals described in the case as "others" (*Brown et al. v. Mississippi*, 1936, p. 281), had induced the initial confessions by hanging one of the defendants from a tree, lowering him before he died, hanging him again and once again lowering him before death, and, when faced with his continued denials, tying him to a tree and whipping him. The defendant continued to maintain his innocence in the face of this torture, and he was allowed to return home, a difficult journey due to "intense pain and agony" (p. 281). One or two days later, the same deputy returned to the home of the suspect, arrested him, and drove toward the county jail. On the way to the jail, the deputy stopped the vehicle and once again severely whipped the defendant while making it clear that he would continue until the suspect confessed. At that point, the suspect did confess. Seeking corroboration, police used leather straps with metal buckles to beat the other suspects until they, too, confessed.

Although the defendants pleaded not guilty and these details came out at trial, including the police admission of whippings (in which the deputy noted that he hit them "not as much as I would have done if it were left to me," p. 284), the defense counsel did not move to exclude the confessions, the jury convicted the defendants, the court sentenced them to death, and the Mississippi Supreme Court affirmed the convictions. Many of the parties involved, including the Mississippi Supreme Court, accepted these interrogation tactics. But the U.S. Supreme Court reversed

the Mississippi Supreme Court and ruled that confessions obtained by physical coercion could no longer be admissible at trial (*Brown et al. v. Mississippi*, 1936; Wakefield & Underwager, 1998). The U.S. Supreme Court extended these principles in a series of decisions that limited the amount of time police could deprive a suspect of sleep (*Ashcraft v. Tennessee*, 1944) or food (*Reck v. Pate*, 1961).

These and other cases, combined with the Wickersham Commission Report and journalistic coverage, decreased police use of the third degree. As police transitioned from physical to psychological tactics in the decades after *Brown et al. v. Mississippi* (1936), the U.S. Supreme Court decisions across 35 confession cases limited the use of psychological pressure during interrogation (e.g., *Chambers v. Florida*, 1940; see Wakefield & Underwager, 1998) by arguing that such tactics can be as coercive as physical abuses (see *Blackburn v. Alabama*, 1960). These legal precedents helped to shape the totality of the circumstances in which current interrogation practices emerged.

Internal Influences: The Rise of Officer Professionalism

In what Kelling and Moore (1988) call "the reform era" (p. 4), starting in the 1920s and extending into the 1970s, police responded to external pressures with internal moves to increase professionalism. One prominent leader in this transition, August Vollmer, the Chief of Police in Berkeley, California, promoted politically independent and professional police who sought to prevent and resolve crime (Bunn, 2007; Kelling & Moore, 1988; Parker, 1972).

Police professionalism advanced by incorporating a number of important changes, which in turn affected practices of police interrogation. First, police moved away from their roles as general service providers and focused exclusively on crime prevention and control (Monkonnen, 1981). Second, the separation of police hiring and management from local political leaders largely ended patronage and enabled merit-based selection and promotion of officers; these changes also promoted crime control above other activities that had been driven by political interests of local leaders (Kelling & Moore, 1988). An important corollary of these reforms is that officers could expect to be retained for their performance rather than due to political patronage. They could view law enforcement

as a career rather than a temporary appointment. Third, the organization and administration of police activities improved as a result of writings by police officer and criminology scholar O. W. Wilson (1950), a former student and associate of Vollmer, and these changes reduced the discretion previously afforded to individual officers (Leo, 1992). Fourth, police embraced and actively promoted the emerging science of policing, incorporating earlier developments in identification of suspects (e.g., the Bertillon system of classifying suspects based on bodily measurements, MacDonald, 1905), fingerprinting (Galton, 1909), and investigatory techniques (Gross, 1906). The incorporation of technological improvements such as patrol cars, radios, and rapid response systems emerged alongside the science of policing (Oliver, 2006). Fifth, as noted previously, educational changes as recommended by the Wickersham Commission Report (1931) included the formation of police academies and similar reforms. These changes spread across the nation. According to Leo (1992), in 1930, approximately 12 departments had large-scale police academies, but by the late 1940s, almost every city police department had a formal training program, and in 1967 the President's Commission on Law Enforcement and Administration of Justice released national training guidelines for officers. These and other reforms sought to improve the reputation of the police. Vollmer and others emphasized the moral and public service foundations of policing; J. Edgar Hoover sought to "give FBI agents stature as upstanding moral crusaders" (Kelling & Moore, 1988, p. 5). These factors combined and led to what Leo (1992) called "the triumph of professionalism" (p. 47). Changes such as these had a profound impact on the practice of police interrogation.

Police Interrogation and the Transition from Physical Coercion to Deception

As legal examinations, investigatory journalism, and court decisions drove changes to policing from the outside, and as growth of police professionalism inspired change from the inside, these important developments reshaped the practices of police interrogation. These changes did not result from an individual or from a series of interactions between individuals such as journalists and judges; they resulted from complex patterns of court decisions, media responses, and changes in public

perceptions, as well as from the work of important individuals such as Wickersham and Vollmer. Police moved away from the widely accepted activities of the third degree and replaced these methods with trickery and deception, among other tools. The emphasis on trickery and deception has persisted into the present; in later chapters, we discuss deception and other tactics along with the small but growing limitations on such approaches.

The professionalization of police had a powerful impact on the transition away from coercive interrogations. As Vollmer, J. Edgar Hoover, and others emphasized moral integrity and public service (Kelling & Moore, 1988), officers increasingly viewed the third degree as both unethical and ineffective. Although former police officer and forensic science educator Larry Barksdale (2012) reported that he was taught and encouraged to use physically coercive interrogation tactics as a young police officer in the 1960s, these tactics faded. Even as Chafee et al. (1969) found evidence of the persistence of the third degree into the 1960s in cities across the United States, many of the cases they reviewed date to the 1920s, when these reforms began, and by the mid-1960s, the third degree was largely absent from police departments in the United States (Leo, 2004). In addition to the larger forces from inside and outside of policing, some individual police reformers powerfully shaped the practice of police interrogation (Woody, 2019). Two of these pioneers were W. R. Kidd and Fred E. Inbau.

In 1940, police officer and interrogation reformer W. R. Kidd wrote the first interrogation manual published in the United States (Kamisar, 2008), and he unequivocally placed himself on the side of the those who challenged the use of physical coercion. As noted earlier, Kidd argued that "the third degree should never be used by police" (p. 46). He based this position on his concerns that this technique can lead to false information and false confessions, that confessions generated by the third degree are likely to be excluded from court, and that "public confidence in the police is shattered" when this technique is used (p. 47). Kidd also reviewed possible effects on the suspect in addition to false confessions, such as severe mental illness ("he will go insane if the torture is severe enough," p. 47) and death. Kidd's strong perspectives, as well as the readable nature of his small book—which could conveniently fit into a back pocket—set the stage for reform and for the authors of future manuals (Kamisar, 2008).

Kidd's (1940) manual influenced the works that followed, including the field-changing manual written by Fred E. Inbau (1942), subsequently described by observers as "the most well-known and influential [police interrogation manual] in the United States" (Leo, 2004, p. 64). Inbau also argued strongly against the third degree, and he advocated instead for trickery and deception as more effective tactics that are also more acceptable to courts, to the public, and to police officers themselves. His legacy remained powerful across the twentieth century and into the present, such that his obituary, which in its title describes Inbau as the "criminologist who perfected interrogation," states that he "helped elevate trickery and deceit to a high art of police interrogation" (Thomas, 1998, ¶1).

This transition from physical coercion to trickery and deception set the stage for current police interrogation practices. There now exist limits on police deception that did not exist in Inbau's day. Even as late as the 1967 edition, for example, Inbau and Reid argue that "although recent Supreme Court opinions have contained derogatory statements about 'trickery' and 'deceit' as interrogation devices, no case has prohibited their usage" (p. 196). As we will see, there are now some legal limits established by court precedents, even if these limits do not restrain many deceptive interrogation tactics or provide more than limited protections for suspects. For example, police cannot use deception that would shock the conscience of the community, as they did by telling a woman that unless she confessed she would lose her government benefits and custody of her children (*Lynumn v. Illinois*, 1963). Despite these and a few other limitations, trickery and deception continue to define much of police interrogation in the United States. This emphasis on deceptive interrogations reflects the powerful influence of Inbau, who argued that "if deceit is impermissible a ban will have to be placed on all interrogations of criminal suspects. And without some elements of 'trickery,' such as leading the suspect to believe that the police have some tangible or specific evidence of his guilt, many interrogations will be totally ineffective" (Inbau & Reid, 1967, pp. 196–197).

Inbau's personal history as both a practitioner and a legal scholar added to his prominence (Thomas, 1998). Many scholars today raise important questions about his methods, but in the mid-twentieth century Inbau, later joined by John E. Reid, provided a powerful voice for reform

of interrogation practices from within law enforcement. Together, Inbau and Reid developed what is now called The Reid Technique (Inbau et al., 2013), an interrogation method we examine later, and they began widely teaching this approach in 1974 (Jayne & Buckley, 2017). Reid later started John E. Reid & Associates, Inc., a corporation that provides training in The Reid Technique to police officers, corporate fraud and loss investigators, and others.

Despite Inbau's public attacks on the Warren Court and on those who would limit trickery and other deceptive police tactics (Kamisar, 1977), some view Inbau as a progressive reformer, particularly given his role in challenging the use of the third degree. Even some of his critics note this legacy. For example, one of the creators of a non-deceptive approach to interrogation opposes the continued use of tactics developed by Inbau and Reid but noted that "I think the Reid Technique was a child of its time" (Shepherd as cited in Starr, 2013, ¶54), when deception provided a less coercive option for interrogators than the third degree.[3]

Other Interrogation Approaches

Other early police interrogation manuals echoed the calls for deception rather than coercion. When Clarence D. Lee (1953), a former captain in the Berkeley, California, police department, provides instruction on lie detection and interrogation, he emphasizes deception over the third degree for several reasons. First, he describes the ineffective nature of physical coercion and, importantly from the standpoint of police administrators, the "wasted effort" and loss of officer work and investigatory time when police use these procedures (p. 32). Second, he views polygraph examinations as scientific tools that have greater veracity than a confession generated by the third degree, a topic we examine in subsequent chapters. Third, he views the third degree as incompatible with the public and professional image he seeks for police officers.

In 1959, police investigators and polygraphists Richard O. Arter and Rudolph R. Caputo (1959) took a similarly strong line in their *Interrogation for Investigators*. Their work suggests that physical coercion was no longer a viable option to consider, and they employ strong *ad hominem* attacks against investigators who, in 1959, continued to view the

third degree as a possible tactic. Arter and Caputo firmly state, "Any person who *really* is an interrogator is first of all a gentleman. A gentleman would never stoop to any force, threats of force, or illegal promises" (p. 153, italics in original). Despite the emphasis on deception throughout their work and despite their biased assumption that the interrogator must be a man, they reject the notion that anyone could both support the use of the third degree and be an effective police interrogator.

Ongoing Changes

As we have seen, interrogation tactics have changed over time. Indeed, an examination of different editions of the *Criminal Interrogation and Confessions* manual suggests that the authors have changed some of their strategies in response to their own research, the research of social scientists, investigatory journalism, and changing laws and court precedents. For example, they now remind trainees that false confessions can occur and that part of their responsibility as interrogators is to take precautionary measures to protect innocent individuals (John E. Reid & Associates, Inc., 2015). In the 5th edition (Inbau et al., 2013), an entire chapter focuses on assisting interrogators in distinguishing between true and false confessions and behaviors that are believed to be evidence of guilt. Despite these revisions, companion materials such as the second edition of *Essentials of the Reid Technique: Criminal interrogation and confession* (Inbau, Reid, Buckley & Jayne, 2013) continue to include only limited discussions of false confessions.

Other factors have slowed the ongoing change in police interrogation practices, particularly inertia within departments. For example, many officers receive informal training from senior officers, who have been found to rely more on intimidation and other tactics that reflect police and legal culture of past decades (Kassin et al., 2007).

In addition to their popular training manual, John E. Reid & Associates, Inc., also support a website designed to keep interrogators and other officers informed about legal updates related to criminal investigation (John E. Reid & Associates, Inc., 2018a). For example, in 2014 John E. Reid & Associates, Inc., shared updated recommendations about police deception during interrogation that included a brief review of recent appellate court decisions that both supported

and rejected the use of deception. Although John E. Reid & Associates, Inc., are advocates of police deception (Inbau et al., 2013), they are concerned about the degrees of deception that some officers are willing to use. They go on to caution officers that "we are in a position to preserve the right to use deceptive practices responsibly during an interrogation or to abuse that right and potentially lose the future ability to misrepresent information to a suspect" (John E. Reid & Associates, Inc., 2014, ¶11).

As we will see throughout this book, police interrogation tactics from John E. Reid & Associates, Inc., as well as others continue to change across time to fit the larger totality of the circumstances. We will examine specific changes and their causes in subsequent chapters. Many changes have come from the outside, such as the requirement that police inform suspects of their rights in the form of *Miranda* warnings (Inbau & Reid, 1967; *Miranda v. Arizona*, 1966). Ongoing review by appellate courts may change what trial courts, the public, and police interrogators view as acceptable deception during interrogation (Heyl, 2013/2014; McKinley, 2014; *People v. Thomas*, 2014). Additionally, some scholars and practitioners continue to develop new models for interrogation that reduce or eliminate deception in an effort to reduce false confessions as well as to improve public perceptions of the police (Milne & Bull, 1999; Meissner et al., 2014). Police themselves have also developed new methods without deception (see Milne & Bull, 1999; Starr, 2013).

Interrogation methods developed in police work are also used in other venues. In this book, we focus largely on police interrogation, but similar approaches are employed in military interrogations, raising similar concerns (see e.g., Loftus, 2011; Meissner, Evans, Brandon, Russano, & Kleinman, 2010; Senate Select Committee on Intelligence, 2012; Brennan et al., 2014; Hoffman et al., 2015). Police interrogation methods have also become more prevalent in corporate fraud and loss prevention interviews. These uses of police interrogation tactics have received attention in two primary ways. The first is through those who train both police officers and fraud and loss prevention employees (e.g., John E. Reid & Associates, Inc., 2018a; Wicklander-Zulawski & Associates, Inc., 2016). The second is through court cases concerning false confessions resulting from trickery and deception used by fraud and loss investigators. Some of the interrogation tactics reported in these

Table 1.1. Emergence of Civilian Policing in the United States: American Revolution through 1969

American Revolution—1890s	
Early 1800s	Establishment of slave patrols throughout the United States, especially in the South
1829	Metropolitan Police Act establishes civilian policing in London
1845	Establishment of civilian policing in New York City
1890s	Promotion of racially biased policing under Jim Crow in the South
1890s	Racially biased policing to establish and maintain sundown towns throughout the North
1890s–1930s—The Political Era	
1897	*Bram v. United States*; U.S. Supreme Court rejects confessions generated by explicit threats and promises; this case has little effect on police interrogation practices
1908	*On the Witness Stand* (Münsterberg)
1909	August Vollmer becomes police chief in Berkeley, CA
1924	*Ziang Sung Wan v. United States*; U.S. Supreme Court rejects confession due to coercion
1930s–1969—The Reform Era	
1930	*The Third Degree: A Detailed and Appalling Exposé of Police Brutality* (Lavine)
1931	"Report on Lawlessness in Law Enforcement" (Wickersham Commission Report)
1931	*Our Lawless Police* (Hopkins)
1930s	FBI rejects third degree and establishes national training programs
1936	*Brown et al. v. Mississippi*; U.S. Supreme Court rejects confessions generated by physical coercion and establishes precedent
1940s	Growth of police academies and other training programs
1940	*Police Interrogation* (first manual by W. R. Kidd)
1942	*Lie Detection and Criminal Interrogation* (manual by Inbau)
1944	*Ashcraft v. Tennessee*; U.S. Supreme Court limits sleep deprivation as an interrogation tactic
1953	*The Instrumental Detection of Deception: The Lie Test* (manual by Lee)
1959	*Interrogation for Investigators* (manual by Arter & Caputo)
1960	*Blackburn v. Alabama*; U.S. Supreme Court rules that psychological tactics can be as coercive as physical tactics
1961	*Reck v. Pate*; U.S. Supreme Court limits time suspects can be deprived of food during interrogation
1962	*Criminal Interrogation and Confessions* (manual by Inbau & Reid)
1967	*President's Commission on Law Enforcement and Administration of Justice*
1969	*The Third Degree: Report to the National Commission on Law Observance and Enforcement* (Chafee, Pollak, & Stern)

cases would be impermissible for police, and civil claims in some jurisdictions have included multiple defendants and resulted in millions of dollars in damages (Elbein, 2014; see *Ulmer v. The Home Depot, Inc.*, 2007, for a Federal District Court case from Delaware, and *Robles v. Autozone, Inc.*, 2008, for a California Court of Appeals case[4]).

Conclusions

The increase in professionalism and the changes from coercion to deception have formed the foundations of current police interrogation. Today, trickery and deception have replaced physical coercion as the primary methods of police interrogation. Yet many historical forces remain relevant, and therefore they will be included throughout this book. Journalism continues to shape policing tactics in general and interrogation techniques in particular. Such media sources include documentaries related to interrogation and confession (e.g., Bikel, 2010; Burns, McMahon, & Burns, 2013); news coverage of false confession cases (Bandler, 2014a, 2014b; Starr, 2013, 2015a, 2015b; Balko, 2014); and online sources of trial footage (for an example involving streaming court video, see NBC News, 2015). This media coverage has the potential to increase public awareness concerning false confessions and their causes. Additionally, emerging court precedents continue to affect interrogator behavior. For example, several recent cases have imposed minor limits on police interrogators' uses of fabricated evidence. If the fabricated evidence could be mistaken for real evidence (e.g., a fabricated forensic analysis presented to the suspect on official police letterhead) by appellate courts, journalists, or future investigators, then any resultant confession may be inadmissible (see *State v. Cayward*, 1989, for a case from a Florida Court of Appeals; see *State v. Chirokovskcic*, 2004, for a case from a New Jersey appellate court). Moreover, as we have seen, interested parties including police and scholars continue to develop new interrogation strategies with the explicit goal of reducing false confessions.

2

The Current Nature of Police Interrogation

Would you ever confess to a crime you did not commit? Before you answer that question with the same *No!* as hundreds of others (Woody et al., 2010), consider Matthew Livers and the circumstances leading to his arrest in Cass County, Nebraska (Ferek, 2014). Livers falsely confessed to the murder of a local couple, Sharmon and Wayne Stock. The Stocks were not just any elderly couple. They were Livers's aunt and uncle. In addition to implicating himself, Livers's false confession also identified his cousin, Nick Sampson, as his fellow perpetrator. We now know that the actual killers, 17-year-old Jessica Reid and 19-year-old Gregory Fester, stole a truck in their native state of Wisconsin, traveled back roads of several plains states, and burglarized isolated farmhouses. Traveling at night, they broke into remote farmhouses to steal money for gas and drugs. The burglary at the Stock farm did not go as planned (ABC News, 2010). According to Reid, as they entered the farmhouse they could hear snoring upstairs, and, rather than leave, they followed the noise. When Reid and Fester entered the Stocks' bedroom, Wayne Stock woke up, and the young couple shot and killed the Stocks, as described by Reid in her vivid true confession (ABC News, 2010). In the meantime, the police arrested and interrogated Livers and prompted his false confession, which they used to support homicide charges against Livers and his cousin Nick Sampson (Ferek, 2014). Due to these errors, for six months after the murder in Murdock, Reid and Fester lived freely in Wisconsin while Livers and Sampson sat in a Cass County jail awaiting trial.

Like many of the cases presented in this book, Livers's false confession was not the result of one cause but emerged from the totality of the circumstances (for a thorough review see Ferek, 2014). Livers became a suspect after Cass County law enforcement asked a common investigatory question following a murder: "Is there anyone who would want to hurt your parents?" The Stocks' adult children quickly suggested police question Matt Livers because of his spotty work history, his purported

anger problems, and their suspicions of drug use. The Stock children also identified a possible motive. Livers had recently argued with Sharmon and Wayne when they refused to give him ownership of a family home on nearby property.

This information led Cass County investigators to question Matt Livers for many hours across consecutive days, in a police car and at the police station, where he eventually confessed. This process involved multiple interrogations, each designed to gain more information that was consistent with officers' existing theories about his guilt. Even though the Cass County law enforcement officers eventually admitted Reid and Fester were involved in the murders, they failed to admit that the countless hours they had spent investigating both Livers and Sampson had been in error. This tunnel vision was part of what prevented them from relinquishing their primary suspects.

Livers had several individual circumstances that made him susceptible to the interrogation techniques. He was a student in special education all of his academic life; his IQ scores ranged from 63 to 70 (Ferek, 2014). As we will see, having a low IQ can increase an individual's susceptibility to leading questions and risk of false confession. Officers may have struggled to recognize Livers's limitations due to his verbal skills; he had relatively strong verbal scores on cognitive assessments, particularly compared to other domains (Ferek, 2014). During the interrogation, however, Livers behaved in ways that could have—or should have—raised questions. He took many of the interrogators' statements literally. For example, when they yelled for him to be a man and stand up for what was right, he physically stood up in the interrogation room (*Livers v. Schenck*, 2012). Additionally, as is typical of individuals with low IQ, Livers responded to many of the interrogators' questions by acquiescing or answering "yes" or "right" without providing additional detail (Clare & Gudjonsson, 1993; Gudjonsson, 1990; Gudjonsson, 2003).[1] Despite Livers's limited cognitive abilities,[2] officers used confrontation and deception extensively throughout the interviews.

As the interrogation continued, Livers replaced his "yes" answers with more detailed responses, including known facts of the crime. But those facts resulted from contamination: his confession now included factual information that the interrogators had shared with Livers earlier in the interrogation. As the investigation proceeded and as interrogators

questioned Livers a second time, the gaps in his story were replaced with contaminated information, making him appear to have knowledge that only the perpetrator would have. Contamination is nearly always present in false confessions (Garrett, 2010, 2015; Leo, Neufeld, Drizin, & Taslitz, 2013), and this case is no exception. In this case, the contamination eventually became apparent because the information Livers included in his confession did not reflect the evidence from the crime but rather the erroneous beliefs that police had created about the crime at the time of Livers's confession. These errors came from conversations with other law enforcement officials, crime scene investigators, emergency medical personnel, family members, and other community residents who had not only shared information with each other but also with Livers.[3]

There were other factors about Livers that made him vulnerable. In addition to a low IQ, Livers had a history of compliant behavior and an eagerness to please important figures in his life (Gudjonsson, 2003). He also demonstrated a tendency to accept the misleading information in the interrogators' questions, what former police interrogator and psychological researcher Gisli H. Gudjonsson calls *suggestibility* (Gudjonsson, 2003). Despite perceptions of Livers as argumentative by previous employers as well as Stock family relatives, cousins Nick and Will Sampson suggested that Livers was not violent and would never have murdered his aunt and uncle. They also reported to police that Livers was overly concerned about obeying his parents and therefore did not like doing drugs, drinking, pursuing romantic relationships, or engaging in other behaviors that his parents would reject (Ferek, 2014). Livers's compliance and his desire to escape the interrogation help clarify both why he confessed and why he recanted his confession a day later (Ferek, 2014; Gudjonsson, 1989).

Because of Livers's attempt to recant his confession and his strong denials of guilt, police interrogators became more intense. In his confession, Livers took responsibility for the crime and identified Nick Sampson as his co-conspirator. But the details of his confession continued to become more complete with each subsequent interrogation—he was questioned multiple times (Ferek, 2014). During one interrogation, he drew a diagram of the inside of the Stock house and indicated where Sampson had been during the murder. This information was crucial to the case because Sampson had refused to speak to investigators. When

investigators examined Livers's drawing, they interpreted Livers's knowledge of the Stock's home as evidence of his guilt. Of course, there was another explanation of why Livers was familiar with the house: the Stocks were part of Livers's family.

Rather than seeing the errors in Livers's initial confession (i.e., the failure of corroboration or the lack of fit between his confession and the evidence) and his later denials as evidence of his innocence, the police became more entrenched in their beliefs concerning Livers's guilt. In a later chapter, we will examine social and cognitive factors that drive these apparently counterintuitive decisions (e.g., Kassin, 2017a). As stated in a civil case that emerged from this false confession (*Livers v. Schenck*, 2012), not only did police explicitly threaten Livers with the death penalty, they offered him leniency in exchange for his confession. If these allegations are true, the interrogators violated long-standing legal precedents that preclude explicit threats and promises (*Bram v. United States*, 1897). In addition to these illegal alleged tactics, police employed several problematic techniques. One example was the use of an orchestrated scientific false-evidence ploy (i.e., telling Livers he failed a polygraph). Officers applied these techniques because they were confident in Livers's guilt.

These deceptive tactics also led to the legal consequences faced by one investigator. David Kofoed, the supervisor of the Crime Scene Investigation Division for the Douglas County Sheriff's Office (*State v. Kofoed*, 2012; *Livers v. Schenck*, 2012), was reportedly so convinced of Livers's guilt that he took illegal actions. Kofoed was convicted of planting evidence to corroborate Livers's false confession. Kofoed claimed to have found Wayne Stock's blood in Livers's car, but the investigator with Kofoed did not find any blood evidence, even when retesting the location where Kofoed had claimed to find the blood. This failure to replicate the forensic analysis did not derail the pursuit of Livers until other events unfolded.

A month after the Kofoed's "discovery," police connected evidence from the Stocks' farmhouse to a truck stolen by Jessica Reid and Gregory Fester. Yet officers remained so anchored to Livers's guilt that police offered leniency to Reid and Fester "if they admitted others were involved in the crime and threatened them with more severe punishment, including suggesting Reid might receive the death penalty, if they did

not" (*Livers v. Schenck*, 2012, p. 347). Officers showed photos of Livers and Sampson to Reid, who joined Fester in implicating both Livers and Sampson, although Reid recanted this false claim within 48 hours.

When the conviction for police misconduct became public (see *State v. Kofoed*, 2012), the case against Livers fell apart. Here we note the power of confession evidence. Not even the combination of known false details in his confession, the lack of fit between his confession and the existing evidence, *and* a true confession from a factually guilty suspect were sufficient to shake officers' confidence in Livers's guilt.

These events led to a two-year prison sentence for Kofoed, life sentences for true confessors Reid and Fester, and multi-million dollar lawsuits against the state of Nebraska, Douglas County, and Kofoed (Cole, 2016). Livers and Sampson received $2.6 million from the state and the county, which in turn released those entities from liability (Duggan, 2013). They were also awarded a $6.6 million settlement from Kofoed in 2014; however, this judgment was never paid (Pilger, 2018). In 2016, Livers and Sampson sued the insurance company for Douglas County and Kofoed and received a judgment of $5 million. In September of 2018, a federal appellate court reversed this decision (Pilger, 2018), leaving Livers and Sampson with no recourse but to appeal to a higher court. As of this writing, the resolution of this case remains unknown.

Are you still comfortable saying that you would never falsely confess to a crime you did not commit? As this case and others demonstrate, the totality of the circumstances and not the fortitude of an individual contributes to the likelihood of a false confession. Therefore, this book will examine the totality of the circumstances of society's perspective on crime, individual characteristics and beliefs of suspects, interrogators, attorneys and judges, the interrogation itself, current legal standards, social psychological principles, and expert testimony. Some of these components will be addressed in different ways throughout the book. In this chapter we will begin with society's perspectives about crime, which include both popular media and the extent to which confession research has flourished in recent years. We will then address police biases and introduce the idea of suspect trait characteristics that shape interrogations. Finally, we will address the steps and tactics associated with interrogations, including the foundational *Miranda* warnings. Figure 2 illustrates the aspects of the model we will examine in this chapter.

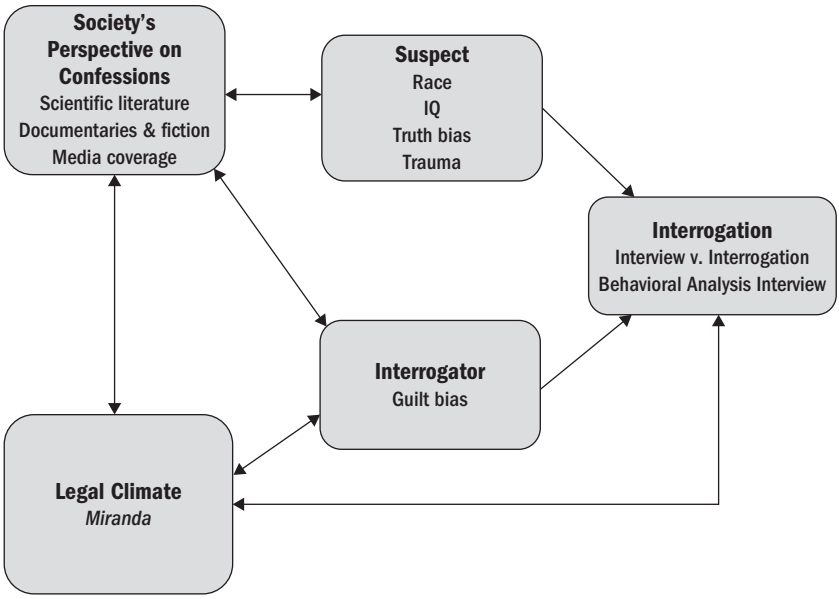

Figure 2.1. Society, Legal Climate, Suspects, and Interrogator Influences on the Interview and Interrogation Processes

Popular media and the press have taken a special interest in false confessions. Documentaries such as *A Murder, Two Suspects, Two Confessions* (ABC News, 2010), *The Confessions* (Bikel, 2010), the Netflix series *Making a Murderer* (Ricciardi & Demos, 2015), and *The Central Park Five* (Burns et al., 2013) are just a few examples. Newspaper reporters have described in detail the false confession cases in their states, and many of these journalists have followed the false confessors as they have navigated the court system seeking monetary justice for their suffering. We will refer to several of these documentary and news sources throughout the book. Although different avenues of the press have covered false confessions and the layperson appears to be becoming more aware that false confessions occur (Mindthoff et al., 2018), individuals have not changed their beliefs about their own likelihood of falsely confessing to a crime. Yet this willingness to believe that you yourself could falsely confess predicts how you evaluate confession evidence (Jones & Penrod, 2016; Woody et al., 2010). Fortunately,

scientific research on the topic of confessions has led to a more comprehensive understanding of what laypersons (and therefore potential jurors) think about confession evidence in general and false confessions in particular.

The History of Interrogation Scholarship

Historically, false confessions and the factors identified as contributing to false confessions received little mention in the academic literature until a series of cultural events moved these topics into the forefront. How did this literature emerge?

A quick review of Google Scholar suggests that prior to 1908 and Hugo Münsterberg's seminal work, *On the Witness Stand*, fewer than 40 manuscripts discussed false confessions. Münsterberg's book and his involvement in a high-profile false confession case did not prompt scholars to address these issues (Kassin, 2016). From 1909 through 1950, researchers on average published 37 or fewer works per decade on the topic—but the numbers exploded in the 1950s.

World War II and the Cold War led to many questions related to interrogation and confession (Woody, 2018). Some events appeared so shocking that they inspired cultural concern and waves of research. For example, in the 1930s, a wave of prominent Soviet loyalists suddenly confessed their treason against the Soviet state and then appeared to walk willingly into their own trials and executions (Rogovin, 2009). In 1940s Hungary, Cardinal Mindszenty, a prominent anti-communist activist, signed a false confession to crimes against the nation he had previously professed to love and support (see Meerloo, 1951, 1956). These and other early Cold War interrogations and false confessions generated extensive interest (e.g., Meerloo, 1956; Sargant, 1957; Schein, 1961). But later false confessions, particularly from U.S. POWs held in North Korea in camps run by Chinese communists, prompted massive responses in U.S. courts (*United States v. Batchelor*, 1956; *United States v. Dickenson*, 1955), by military courts-martial and courts of inquiry (*Columbia Law Review*, 1956; Lech, 2011), and among psychologists and other scholars of interrogation and confession (Farber, Harlow, & West, 1957; Biderman, 1963; Biderman & Zimmer, 1961). Although much of this research was directed

toward military or POW settings in which suspects have limited if any rights and interrogators have few if any limits, some scholarship addressed issues that applied to civilian policing in the United States (e.g., Biderman, 1965; Meerloo, 1956; Sargant, 1957).

These research activities were both wide and deep, including the study of fatigue, drugs, and sensory deprivation as interrogation tools (Group for the Advancement of Psychiatry, 1966a, 1966b), development of simulation training methods (which later became the Survive, Evade, Resist, Escape [SERE] training program) to prepare military personnel for communist capture and interrogation (Meerloo, 1956), and the study of the consequences of resistance and collaboration as well as other features of Korean War POWs (Schein, Cooley, & Singer, 1960). These inquiries also extended into civilian policing, particularly interrogation and confession (Meerloo, 1956; Sargant, 1957).

These research programs exploded at approximately the same time as the wave of police reforms discussed earlier. In the 1930s through the 1970s, judicial oversight, journalistic and public oversight, and reformers among police themselves shifted the accepted interrogation tactics in U.S. police departments. This body of Cold War scholarship emerged at the same time, and in this cultural context, police reformers, including W. R. Kidd, Fred E. Inbau, and John E. Reid, among others, proposed novel approaches to police interrogation that omitted physical coercion. These and other factors drove this sudden expansion of scholarship, including scholars outside of policing who examined police interrogation (e.g., Meerloo, 1956; Sargant, 1957).

As shown in Table 2.1, the major increase in research occurred in the 1950s and 1960s. As the U.S. continued to engage in wars around the globe, however, research on interrogations and confessions, particularly false confessions, continued to evolve (McCoy, 2012). We see interest growing substantially after the Korean War (1950–1953), U.S. involvement in Vietnam (1965–1975[4]), the Gulf War (1990–1991), Afghanistan (2001–present), and the Iraq War (2003–2011).

The rapidly growing publication rates since 1951 and the concurrent growing interest in the topic by laypersons suggest that the topics of interrogation and confession bring interesting questions for scholars in the areas of psychology, law, and criminal justice as well as for individuals currently or formerly involved in the criminal justice system. As

TABLE 2.1. Advancement in Interrogation Research

Time Frame	Number of Publications
Prior to 1908	38
1909–1930	37
1931–1940	20
1941–1950	9
1951–1960	92
1961–1970	128
1971–1980	171
1981–1990	291
1991–2000	856
2001–2010	3,740
2011–2017	4,500

we will see throughout this book, what emerged in the mid-twentieth century—in both civilian and military interrogation literature—is still largely with us today.

In the remainder of this chapter, we review typical processes involved in police interrogation. We open with distinctions between interviews and interrogations, particularly the ways different sources define these terms. We then review the most common framework for police interrogation. We conclude the chapter with a review of important questions before we move into a review of police deception in the next chapter.

Interviews and Interrogations

The terms *interview* and *interrogation* are often used interchangeably. As one detective noted, *interrogation* sounds far scarier, and therefore he recommends using only *interview* in court and in front of jurors, regardless of the tactics being discussed (Bruch, 2008).[5] Additionally, there exist conflicting definitions of *interview*. We examine differing uses of these terms, and then we describe common goals and approaches to interviews before examining interrogations.

A common definition of *interview* is "the process of questioning an individual who is not a suspect but knows something about the alleged

crime or about the people involved in the crime" (Bennett & Hess, 2006, p. 162). Under this definition, *interviews* include conversations with witnesses, potential suspects, family members of suspects or witnesses, or others. In this process, officers may emphasize rapport and relationship-building (Kelly, Miller, Redlich, & Kleinman, 2013), the most commonly used category of interrogation tactics (Kelly, Redlich, & Miller, 2015). Interviews may transition to interrogations. If an individual whom an officer believes to be innocent unexpectedly makes a statement to connect themselves to the crime, the officer may focus on the witness's involvement, moving to a widely used definition of *interrogation*.

Interrogation is typically defined as "the process of questioning someone who is a suspect in a crime" (Bennett & Hess, 2006, p. 162). Other definitions of these terms exist, however. John E. Reid & Associates, Inc., who claim to train thousands of police officers, fraud and loss prevention officers, and others each year (John E. Reid & Associates, Inc., 2018a), use *interview* to denote a specific interaction. Rather than use *interview* for a wide range of investigatory conversations as described above, they recommend what they call a *Behavior Analysis Interview* (BAI) with a person who is suspected of a crime. If the BAI leads officers to believe the suspect is guilty, they then recommend moving to *interrogation* (Inbau et al., 2013; Jayne & Buckley, 2017).

In a BAI, the officer asks open-ended questions intended to be "behavior provoking" (Jayne & Buckley, 2017, p. 3), encourages the suspect to talk, and carefully observes the suspect's resulting behavior. This process generally includes rapport-building and relationship-building (Kelly et al., 2013; Kelly et al., 2015). If officers perceive the suspect's behavior as typical of guilty suspects, officers start interrogating by directly confronting the suspect with their guilt. Before we discuss typical interrogation processes as recommended by John E. Reid & Associates, Inc., we first examine potential difficulties with behavioral assessments of a suspect's truthfulness.

Behavioral Deception Detection

A comprehensive review of deception detection, or lie detection, would require far more space than we can devote in this book. In a keynote address at the 2010 American Psychology-Law Society convention,

Aldert Vrij (2010), a prolific scholar of deception detection, estimated that scholars generated approximately 150 peer-reviewed papers *per year* on this topic. For further review, we recommend comprehensive edited volumes by prominent scholars such as Pärs Anders Granhag and Leif A. Strömwall (2004); Granhag, Vrij, and Bruno Verschuere (2015); and J. Peter Rosenfeld (2018), among others. Within this text we briefly review behavioral lie-detection techniques in interrogation settings, problems that emerge from these approaches, and the consequences of these problems for suspects as well as officers.

A fundamental assumption underlies behavioral lie detection. These strategies start with the expectation that individuals telling high-stakes lies do not want to be caught and therefore show behavioral signs of lying that are recognizable to trained observers (Ekman & Friesen, 1969; Zuckerman, DeFrank, Hall, Larrance, & Rosenthal, 1979). This assumption persists despite some important features of interpersonal deception.

First, interpersonal deception is common. Lying eases many social interactions and is common across individuals and cultures. For example, it may be easier for us to appear falsely pleased to see someone we dislike rather than disclose why we do not want to interact with them. Similarly, rather than being honest, it may be easier to reassure people with whom we are close that we agree with them in most political settings or even that they look great in those matching hats. At risk of challenging deeply seated notions of United States history (McGuffy, 1836), we strongly suspect that even President George Washington lied socially. A diary study showed that college students typically lie an average of nearly two times per day (DePaulo, Kashy, Kirkendol, Wyer, & Epstein, 1996; see Serota, Levine, & Boster, 2010, for counter-claims). Public figures are obviously not exempt. For one example among multitudes, in 2018, a close aide reported telling "white lies" on behalf of the president of the United States (e.g., telling visitors that the president is in a meeting when he is not) as well as *to* the president (e.g., "spinning news favorably" to share with him; Raju & Herb, 2018b, ¶3). The aide denied lying about or to the president in more substantive ways, but these revelations raised difficult public questions (Raju & Herb, 2018a, 2018b).

Second, unlike other social interactions in which people want their intentions and honesty to be apparent to observers (e.g., while presenting scientific data, testifying in court, or flirting), liars typically employ

countermeasures to hide their deception. For example, people are typically aware of the pervasive beliefs that liars have shifty eyes, hesitate to make eye contact, or fidget more than truth-tellers (Vrij, 2010). As a result, liars often exploit these beliefs and employ countermeasures. Psychological researchers Samantha Mann, Aldert Vrij, and Ray Bull (2002) found that liars do not make less eye contact than truth-tellers and that liars generally do *less* fidgeting than do truth-tellers to reduce the likelihood that they will be caught (Mann, et al., 2002; see Vrij, Fisher, Mann, & Leal, 2010, for reviews). The ubiquity of lies and effective uses of countermeasures interact with other factors described below to make behavioral lie detection difficult at best.

A third issue revolves around the indicators of lying. What are behavioral signs of deception? Many interrogation training materials include claims that they can guide investigators in accurate evaluations of suspects' truthfulness by observing suspects' behaviors (e.g., Inbau et al., 2013; for a review, see King & Dunn, 2010). William R. King, a criminal justice scholar, and Thomas M. Dunn, a psychological researcher, evaluated these claims in the research literatures of both criminal justice and psychology. They noted that in addition to the lack of evidence for suggested recommendations pervading many criminal justice textbooks and training manuals, some purported signs of deception appear ripe for potential bias. How can any observer consistently evaluate what would constitute rapid eye movement as a sign of deception in contrast with typical eye movement? Similarly, how can observers reliably separate "more eye contact" or "less eye contact" as signs of deception from appropriate eye contact, or "slouching" or "sits rigidly" as signs of lying from appropriate sitting behavior, particularly in the highly stressful environment of a police interrogation room (see King & Dunn, 2010, Table 1, pp. 310–312)? Additionally, police generally ask these questions of individuals in police interrogation rooms, which, as we note below, are intensely stressful environments that typically house people facing accusations of crimes—accusations likely to be stressful regardless of whether the suspect is guilty or innocent. As though these difficulties do not present enough possible errors, the behaviors of some suspects raise important questions, particularly in conjunction with the biases officers typically bring to the interrogation setting, as we note below and examine further in later chapters.

Beyond these details about the behavioral signs of deception, King and Dunn (2010) noted that scholars in both psychological and criminal justice have developed substantial but largely disconnected bodies of research in these areas. Simply stated, scholars in criminal justice and psychology rarely cite each other. In particular, the tremendous breadth of deception detection literature from psychological science remains largely uncited by criminal justice scholars, textbook authors, and authors of law enforcement training manuals (King & Dunn, 2010). The literature available to criminal justice practitioners therefore includes circular references (i.e., manuals that cite each other rather than original scholarship to justify claims of relevant cues and the effectiveness of behavioral lie detection), claims based on officers' experience or intuition rather than systematic experimental study,[6] and widespread conflicting recommendations (King & Dunn, 2010). Despite claims in many sources that behavioral deception detection is evidence-based, readily learned, and effective (see Starr, 2013), no common body of training materials meets these criteria.

Many behavioral signs are presented as effective indicators of lies, yet overall rates of behavioral deception detection are poor. In any forced-choice task (e.g., when observer must rate a speaker as honest or deceptive), chance performance is 50%. Across many studies and a series of meta-analyses, participants using behavioral deception detection to separate liars from truth-tellers perform at 54% accuracy (DePaulo et al., 2003; Bond & DePaulo, 2006, 2008). This 54% accuracy rate does not approach findings from separate studies of the degree of certainty required to meet the standard of proof in criminal trials. Although definitions and quantifications of "beyond a reasonable doubt" vary extensively (Dhami, 2008; Kagehiro, 1990), average estimates typically center around 90% (Hastie, Penrod, & Pennington, 1983; McCauliff, 1982; Simon & Mahan, 1971), and for research purposes some scholars have quantified this standard of proof as 91% certainty (Woody & Greene, 2012; Kagehiro & Stanton, 1985), well beyond the 54% available through behavioral deception detection.

Despite these reviews and robust meta-analyses, many continue to support behavioral deception detection as a reasonable and viable tool for police. Some scholars claim that officers are far more accurate than 54%. For example, J. Pete Blair, Timothy Levine, Torsten Reimer, and

John McCluskey (2012) cite Horvath, Jayne, and Buckley (1994), who found that experienced interrogation trainers reached 72% accuracy with an option to note that some videos were inconclusive. Blair et al. (2012) also report that when scholars removed inconclusive responses from the data the observers reached 86% accuracy. Additionally, Blair et al. (2012) note that most attempts by police officers to detect deception do not happen under laboratory conditions (i.e., where an observer watches a short video depicting a true or false statement and then makes a judgment based on only the video; see also John E. Reid & Associates, Inc., 2018b). Although Blair et al. (2012, p. 723) address the claims of King and Dunn (2010), they do not challenge central conclusions of King and Dunn (2010). Rather, Blair et al. note that police rarely employ behavioral deception detection in the absence of any context or evidence. We not only agree with this claim, we strongly recommend extension of these ideas such that investigators seek evidence to evaluate suspects' claims and to use evidence rather than behaviors to evaluate suspects' truthfulness as well as the veracity of confessions.

In addition to noting differences in laboratory and field deception detection tasks, in the same article, Blair et al. (2012) stated that John E. Reid & Associates, Inc. (see 2018b) do not recommend evaluating specific behaviors to seek evidence of deception. As noted by Blair et al. (2012), John E. Reid & Associates, Inc. (2018b) recommend comparing potential deceptive behaviors against a baseline of observed individual behavior norms. Despite these claims, in their texts and their training materials, John E. Reid & Associates, Inc., appear to claim that specific signs accompany deception (see King & Dunn, 2010, p. 309; Starr, 2013, 2016, respectively). The wide variety of behaviors that authors and trainers associate with lying (cf. King & Dunn, 2010, Table 1) raises questions of the potential roles of police biases in evaluations of suspects' truthfulness.

These factors combine to present a dangerous influence on the totality of the circumstances. It is not simply that observers, including police officers, are poor behavioral lie detectors. Misplaced confidence also plays a role; one study of police interrogators found that they believe they are an average of 75% accurate at behavioral deception detection (Kassin et al., 2007). Problems emerge from the combination of the poor accuracy rate *and* the persistent but false belief that they can indeed

separate liars from truth-tellers with substantially better accuracy than chance and than laypersons. Prominent interrogation scholar Saul M. Kassin and his student Christina Fong (1999) educated college students with available training materials for behavioral deception detection, and then the researchers presented participants with a series of interrogation videos with true and false denials from mock suspects who had committed mock crimes. Kassin and Fong (1999) compared trained and untrained participants on a number of measures. As expected, both groups performed poorly in deception detection. The trained observers, however, were *slightly less* accurate but were *more* confident and provided *more* justifications for their decisions than did the untrained group (see John E. Reid & Associates, Inc., 2018c for a rebuttal). This combination of factors, including police biases and other characteristics of interrogators, can lead to misclassification errors (Leo, 2008), in which innocent suspects are believed to be deceptive and therefore guilty. As a result, these suspects too often face not merely additional interviews but confrontational interrogation.

Police Biases

One way that social psychological principles can benefit our understanding of interrogation strategies and confession evidence is by explaining how typical thinking biases affect police. Our biases shape not only how we recall and learn about the world around us; they also shape what we see in the first place (Fiske & Taylor, 2008). Police biases appear particularly relevant for behavioral lie detection, and there is substantial potential for officers' biases to shape their evaluations. We return to these issues in later chapters.

Biases are ubiquitous in human experience. If we had to approach every situation as though it had never happened before, the required consideration would make every interaction of every day overwhelming. Instead, we rely on previous experiences and expectations for the future to navigate the world. Consider a trip to your local fast food restaurant. How do you know whether this is the right place? The décor is recognizable, and the food choices are predictable. You walk into the restaurant and, as you have done many times, choose your favorite meal based on its assigned number, pay for and receive the food, and throw away your

trash after eating. Despite the similarities you expect from ordering food at that restaurant in your hometown, another city, or even a different country, when we become complacent with our previous experiences and do not consider that changes may have occurred, we increase the risk of errors. Whenever familiar restaurants change their menus, their ordering systems, or their meal numbers, we may receive a chicken sandwich instead of a burger. These trivial errors pale in comparison to important errors that may involve the guilt or innocence of individuals within the criminal justice system.

Laypeople typically interact with others with a truth bias, a general expectation that others do not lie (Zuckerman, DePaulo, & Rosenthal, 1981; Levine, Park, & McCornack, 1999). Police, however, have a well-known and well-documented guilty bias. They are more likely to assume that suspects are guilty rather than innocent (Meissner & Kassin, 2002; Skolnick, 1966). Although we have heard the following statement from officers in jest, Leo (1996a) reports that the officer was serious when he provided the following answer to a question about behavioral deception detection (i.e., "how can you tell if a suspect is lying?"): "You can tell if a suspect is lying by whether he is moving his lips" (p. 281). Although these biases are particularly relevant for deception detection, they also shape evaluations of confession evidence in similar ways.

Officers who enter the interrogation room with a pro-guilt bias interrogate in ways that are more confrontational (e.g., violating personal space, interrupting suspects, shouting, and showing images of victims as part of the interrogation process) and involve more pressure (Kassin, Goldstein, & Savitsky, 2003). If interrogators expect all guilty suspects to behave in similar ways and innocent people to behave in other ways, interrogators may fail to recognize a suspect's innocence. Additionally, officers may attend primarily or even exclusively to information that confirms their belief in the suspect's guilt. But where does this pro-guilt bias originate? Social psychology and, more specifically, social cognition can provide some of the answers to those questions.

These biases are not unique to officers. If, like other humans, officers are biased in their interpretation of individuals and events, why do investigations rely so much on officers' hunches and experience? What about physical evidence? Although viewers (i.e., potential jurors) generally love

forensic evidence shows (see, e.g., Shneiderman, 2013/2014), in which investigators almost always find clear evidence, these shows generally do not reflect reality. Instead, officers often investigate crimes for which physical evidence is lacking, and this lack of conclusive evidence is especially likely to apply to crimes not involving DNA (Horvath & Meesig, 1996). As a result, police find themselves relying on interrogations as an investigatory tool and the resulting confession as evidence of guilt.

These issues can present particularly difficult challenges for a small city, such as Murdock, Nebraska, where police had little to no experience in investigating serious crimes, much less a bloody double homicide as in the Livers case. The naïveté of the police is best illustrated by, first, the lack of protective gear worn by officers when entering and leaving the Stock home and property (which increased crime scene contamination) and, second, the degree to which they shared crime scene information with the victims' family and community members (Ferek, 2014). The officers' decision to share this information relinquished their control of important crime details and decreased the likelihood of identifying the perpetrator by their unique knowledge of the crime (e.g., the color of the shotgun shells found at the crime scene). Third, police failed to investigate alternate suspects despite the lack of fit between the evidence and Livers's initial confession.

In addition to a lack of investigatory experience, additional factors can influence the biases interrogators bring into an interrogation. Although all investigations are time sensitive in that officers want answers quickly for victims' families and the community at large, the desire to prevent subsequent crimes can accelerate the intensity of an interrogation. Five days after Andy Stock found his father's dead body and after they had questioned the Stock children, the Cass County Sheriff's Office had Matt Livers return from Lincoln to Cass County for questioning. Over several days, officers interrogated Matt Livers for as much as 11 hours at a time.

If it was not clear before, it was clear now. Officer Schenck and Officer Lambert had identified their primary suspect, and this increasingly powerful pro-guilt bias influenced their approaches. At this point, typical human thinking biases, particularly confirmation bias, guided their approaches to Livers. The interrogation tactics changed with the officers' increasing confidence and their increasing emphasis on confirming rather

than disconfirming their theories. The pronouns shifted. Gone were vague statements such as "What do you think should happen to whoever did this?" Officers focused on Livers and asked questions about *his* particular involvement. At this time, they also started the 11-hour interrogation, complete with an uncomfortably cold room, fabricated polygraph results (that appeared to indicate Livers was guilty), and false-evidence ploys—false claims to have evidence demonstrating Livers's guilt. Officers thought Livers was culpable; now they believed that it was their responsibility to get him to confess and identify his co-conspirator. Unfortunately, these techniques, particularly powerful components of the totality of the circumstances, contribute strongly to false confessions. Physical evidence clearly indicated more than one perpetrator, but, rather than question Livers's guilt, officers became confident that it was only a matter of time until Livers would reveal the identity of his accomplice.

In the Livers case as well as others, officers' biases are particularly relevant during an interview, particularly a Behavior Analysis Interview. In this approach, the decision about whether or not to interrogate—typically starting with direct, intense, and highly confident accusations and claims that the suspect's guilt is known—rests on evaluations of the suspect's behaviors. These assumptions raise more complications with some suspects than with others.

For which suspects are these expectations most problematic? As of this writing, at least three populations in our totality of the circumstances approach raise important concerns. Suspects experiencing traumatic events, either in the commission of the alleged crime or as a victim or survivor of the alleged crime, may show common signs of trauma, including fidgeting and aversion of the eyes (Hellawell & Brewin, 2002), which appear similar to widely endorsed signs of deception (King & Dunn, 2010; Vrij et al., 2010). Additionally, these survivors may provide inconsistent or limited reports from memory (for a review, see Herlihy, Jobson, & Turner, 2012).

A second population that raises concerns are those who bring what we call trait vulnerabilities into the interrogation room, particularly children and people with mental illnesses or cognitive disabilities. The behaviors of some individuals are atypical, and police may misinterpret these atypical behaviors as signs of guilt rather than symptoms of a cognitive or psychological condition.

A third population of people who face particular threats as suspects are members of racial groups culturally associated with crimes. Psychological researcher Cynthia Najdowski and colleagues (2011; Najdowski, Bottoms, & Goff, 2015) extended the notion of stereotype threat to interrogations. The stereotype threat literature largely revolves around academic testing (see e.g., Steele, 1997, 1998). For the groups to which we belong and the identities we have, we know the stereotypes, both positive and negative, about our groups and identities, and we generally do not want to confirm negative stereotypes about our groups. When faced with negative stereotypes, we experience stress, and this stress then interferes with performance. For a concrete example, psychological scholars Steven Spencer, Claude Steele, and Diane Quinn (1999) studied the math performance of women familiar with the negative stereotypes about women and math performance (see also Shih, Pittinsky, & Ambady, 1999). Women who must report their gender before taking a hard math test—making their gender salient and reminding them that they share a devalued identity for math performance—experience more stress and score lower than women who simply take the same test without any reference to gender. How could these factors play out in interrogation settings for suspects who vary on another important individual characteristic: race?

Cultural biases about race and guilt remain widespread, particularly the belief that African American and Latino men are more likely than other men to commit crimes (see Loewen, 2005; Villalobos & Davis, 2016; Wilkerson, 2010). The recent widespread wave of video-documentation has demonstrated the risks to Black suspects from White observers and other observers who perceive Black people as criminal even when engaged in typical activities such as cooking outside (Holson, 2018), leaving a short-term rental house (Criss & Vera, 2018), or sleeping in the common area of a residence hall at a prestigious university (Griggs, 2018). As is well known, police share the racial and other biases that pervade our culture (for a review see Dukes & Kahn, 2017). What factors present in interrogation rooms could compound these existing biases and interfere with officers' attempts at deception detection?

As with women and math, suspects who are African American know the stereotypes about their group and crime, including the expectations that people, particularly men, who identify as Black are more likely to

commit crimes (Najdowski, 2011). Additionally, it is clear that, if convicted, they face longer sentences (see Rhodes, Kling, Luallen, & Dyous, 2015).[7] Najdowski and colleagues then studied the interrogation expectations and self-reported experiences of African American and European American men, and she found clear evidence for stereotype threat in interrogation settings. Compared to White men, men who identified as Black reported more activation of negative stereotypes about race and crime as well as increased anxiety, greater use of countermeasures to control behaviors that may suggest guilt, and greater self-reported likelihood of engaging in behaviors that these participants expected police to associate with lying and with guilt (e.g., nervousness, avoiding eye contact, etc.; Najdowski et al., 2015). Simply stated, Black men know the cultural stereotypes about themselves, and their typical attempts to address these stereotypes increase the likelihood of behaviors that are widely regarded as signs of deception (King & Dunn, 2010; Vrij et al., 2010). These suspects appear likely to face substantially higher risks of misclassification; their behavior may appear to indicate guilt, not because they are actually guilty but due to impacts of cultural stereotypes in police interrogation rooms.

From Interview to Interrogation

As noted previously, some widely used definitions of *interview* and *interrogation* rest on the nature of the target. Is the officer questioning a person who has information about the crime (i.e., an interview) or is the officer questioning a person who is a suspect (i.e., an interrogation)? Other definitions, such as the definitions used by John E. Reid & Associates, Inc. (see Inbau et al., 2013; Jayne & Buckley, 2017), rest on the officers' beliefs about the suspect's behavior during the BAI. During the BAI, if the officers believe that the suspect's behaviors demonstrate truthfulness, officers may end the interview and consider the individual to no longer be a suspect. If the officers rely on behavioral deception detection, despite the previously described pitfalls, they may determine that the suspect's behaviors indicate deception. As a result, the officers may move from the BAI to interrogation, starting with confident and direct confrontation of the suspect with their guilt, as we describe below. If officers believe that they are effective at behavioral lie detection, they

may be confident that they only interrogate guilty people (see Kassin & Gudjonsson, 2004).[8] As noted previously, this overconfidence in ineffective deception detection tactics can lead to misclassification errors such that innocent suspects face the confrontational interrogation tactics described below.

Miranda

The Fifth Amendment to the Constitution clearly states, "No person shall be . . . compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law" (U.S. Const. amend. V). The well-recognized *Miranda* warnings entered interrogation practice in the United States with the case of Ernesto Miranda, who faced accusations of kidnapping and sexual assault (*Miranda v. Arizona*, 1966). He was interrogated without being informed that he had the constitutional right to remain silent. Additionally, he was not informed that police and prosecutors could use any statement he made in court or that he had the right to an attorney (*Escobedo v. Illinois*, 1964). Miranda then confessed and was convicted at trial.

The case eventually went to the U.S. Supreme Court, which issued the decision that codified the familiar warnings into law. "Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently" (*Miranda v. Arizona*, 1966, p. 455). These well-known *Miranda* warnings are required in custodial interrogations—when the suspect is held in the custody of police, or otherwise has their freedom of action curtailed in any significant way by police, *and* is facing questioning from police (*Miranda v. Arizona*, 1966).

Police officers therefore carry a constitutional responsibility to inform suspects of their constitutional rights. To question a suspect who is in custody without the representation of an attorney, the suspect must waive their *Miranda* rights. The waiver may be spoken or written (see *People v. Ferran*, 1978, for a Colorado Supreme Court case). Without a waiver, questioning cannot continue except under special

circumstances as discussed below, particularly given the fifth *Miranda* right beyond those listed above: a suspect may invoke their rights at any time, at which point police must discontinue questioning until the suspect acquires an attorney. These waivers therefore become extremely high-stakes documents in trials involving disputed confession evidence, particularly given the U.S. Supreme Court's emphasis on voluntariness of the confession (Garrett, 2010). In part as a result of this emphasis, *Miranda* warnings, exceptions, related deception, and other factors have generated substantial interest among scholars in law and related scientific fields. A comprehensive treatment of *Miranda* is beyond the scope of this book (see Wrightsman & Pitman, 2010); therefore we can only review some critical issues here.

Despite the foundational nature of these constitutional rights, several situations exist in which *Miranda* warnings are not required. For example, when the safety of the public is at risk, a suspect's confession before *Miranda* warnings may still be admitted at trial (see *New York v. Quarles*, 1984). This formed a central question in the trial of James Holmes, who was convicted of a 2012 mass homicide in a movie theatre in Colorado (Reid, 2018). In the midst of the confusion caused by his violent attack that killed 12 and wounded 58, Holmes was standing outside the rear door of the movie theatre. Police had enough questions about him, particularly regarding his body armor and other tactical gear, to place him in a police car, where he identified himself as the shooter without being informed of his *Miranda* rights (CBSNews, 2013a). The trial judge admitted Holmes's initial confession at trial, despite the lack of *Miranda* warnings. The judge argued that the police were justified in questioning Holmes quickly, particularly given the potential for other shooters or explosives as well as the ongoing risks to the public, law enforcement officers, and emergency medical personnel.

One of the most controversial *Miranda* showdowns in recent history involved the interrogation of Dzhokhar Tsarnaev, the surviving brother who perpetrated the 2013 Boston Marathon bombing (CBSNews, 2013b). The police questioned Tsarnaev for 16 hours in a hospital without *Miranda* warnings because he faced accusations of terrorism and because of potential ongoing threats to public safety (CBSNews, 2013b). The magistrate judge had concerns that this strategy would lead to appeals, potentially including successful appeals if the jury convicted the

defendant. The magistrate judge then left the courthouse, entered the hospital, and interrupted the ongoing interrogation in Tsarnaev's hospital room to provide *Miranda* warnings. At that point, Tsarnaev quit speaking to police. These actions continue to generate controversy (CBSNews, 2013b; Lonky, 2017), despite Tsarnaev's eventual conviction.

A less well-known aspect of the *Miranda* warnings is the requirement that a suspect's request for an attorney must be clear and unambiguous (*Davis v. United States*, 1994). Police officers do not have an obligation to secure an attorney for a suspect who asks whether an attorney is needed or wonders aloud whether to speak to an attorney. Some important cases have hinged on these details. For example, Lee Malvo, the 17-year old who was convicted of homicide as the younger of the two DC Snipers, terrorized the nation's capital in the fall of 2002. He informed police that his attorneys told him he should not talk to police without his attorneys present. Because Malvo did not make a clear request for his attorneys, police did not contact his legal representation, and officers proceeded to question him in ways that led to his confession, which was admissible at trial (Blair, 2002).

Beyond these challenges, officers may also seek a retroactive *Miranda* waiver from suspects. In a case that led to complex disagreements between the trial court and the state appellate court, police went to the defendant's home to ask him about a burglary (*Oregon v. Elstad*, 1984; Inbau et al., 2013). Police directed the defendant, Michael James Elstad, to dress and enter his mother's living room, and they even informed his mother that they had a warrant for his arrest, but they did not provide *Miranda* warnings. Elstad sat in his living room and made an admission to the police—he stated that he was at the location of the crime. At that point, officers ceased questioning, took Elstad to the police station, read him the *Miranda* warnings, obtained a waiver of rights from Elstad, and then continued questioning him, inducing him to provide both oral and written confessions (*Oregon v. Elstad*, 1984). After the trial court admitted the confession and the Oregon Court of Appeals held that the trial court should have suppressed the confession, the decision was reviewed by the U.S. Supreme Court, which ruled that Elstad's second confession *after* the waiver was admissible because the later presentation of *Miranda* warnings resolved the earlier failures. It was also relevant to the Court that Elstad's first confession appeared voluntary, as did his later

Miranda waiver. Despite the possibility of retroactive waiver, we strongly recommend that police take all possible steps to avoid related risks—potentially that a true confession could be excluded at trial—by seeking clear, careful, well-explained, and video-recorded *Miranda* waivers.

The *Miranda* warnings have faced continuous challenges since their inception. For example, Inbau and Reid (1967) raised concerns about "the new warnings" (p. 195; see also Wrightsman & Pitman, 2010). Despite these challenges, the warnings remain entrenched in U.S. jurisprudence (*Dickerson v. United States*, 2000). Ironically, these warnings came full circle in the life of Ernesto Miranda. As noted previously, the U.S. Supreme Court ordered a new trial for Miranda, without his confession in evidence. Despite the lack of a confession, he was convicted (Petrocelli, 2010), providing an example of a successful prosecution without a coerced confession. After his conviction, he served five years in prison before being paroled. Four years after his release from prison, Ernesto Miranda died from a stabbing in a bar. As he passed away on the floor at the scene of the crime, it is likely that some of the final words he heard were spoken by the police officers to Miranda's alleged killer: "You have the right to remain silent . . ."

Despite their central role in judicial evaluations of interrogations and confessions, *Miranda* warnings take important factors into consideration (e.g., that any waiver of rights must be done voluntarily, knowingly, and intelligently) but appear to provide only minimal if any protection. First, many lay people and many of those who evaluate defendants believe that most people understand their *Miranda* rights, even though misconceptions are extremely common (Rogers, 2011). Second, almost all suspects waive their rights. In Leo's (1996b) sample of 182 interrogations, almost 75% of suspects waived their rights. Similarly, Kassin et al. (2007) found that police detectives estimate that 81% of suspects waive their rights. Third, innocent suspects are substantially *more* likely to waive their rights than are guilty suspects in experimental studies (see Kassin, 2005; Kassin & Norwick, 2004) and in the estimates of police detectives (Kassin et al., 2007). Fourth, once suspects waive their rights, the constitutional protections of *Miranda* do not apply unless suspects re-invoke their rights (Leo, 2012). Fifth, the more experience suspects have in the criminal justice system, even prior experiences unrelated to the current interrogation, the less likely they are to waive their rights

(Leo, 1996b). Innocent suspects with no experience in the criminal justice system—those who most need the protections of their constitutional rights addressed by *Miranda* warnings—remain substantially less likely than others to have these protections.

Another factor relates to the potential protections provided by *Miranda*. Courts have held (see e.g., *People v. LaRosa*, 2013) and the general public believes (Rogers, et al., 2016) that *Miranda* provides substantial protections. As legal scholar Brandon Garrett (2010) argued, *Miranda* warnings provide limited if any protection from false confessions. Garrett (2010) noted that in the 1960s the U.S. Supreme Court shifted its emphasis to the evaluation of a confession's voluntariness, which, as stated by the U.S. Supreme Court in *Missouri v. Seibert* (2004), rests on the evaluation of the *Miranda* waiver and "tends to end with the finding of a valid waiver" (p. 609).[9]

A difficulty in these reviews is that courts may view a confession as voluntary even when the confession is false. In Garrett's (2010) review of 38 proven false confessions, all of the defendants waived their rights, and nearly all defendants in the sample attempted to keep confession evidence out of their trials. In suppression hearings, however, which rest on the voluntariness of confessions, trial courts ruled *all* of the confessions in Garrett's sample to be admissible based on valid *Miranda* waivers. In our final chapter we return to these factors and recommend that legislatures consider reliability hearings alongside voluntariness hearings to evaluate whether a confession may be false as well as involuntary (Leo et al., 2013).

Interrogation

Interrogation typically begins in an interrogation room, such that the room itself contributes to the interrogation and becomes part of what Christopher E. Kelly and colleagues (2013) call context manipulation. Inbau et al. (2013) recommend a small (10 feet by 10 feet) space with hard, straight-backed chairs, privacy, and minimal distractions as well as a one-way mirror. Historically, the one-way mirror allowed for observation, but of course in the new millennium this goal can be readily accomplished with digital cameras that are so small as to be nearly undetectable. Despite the lack of need for the one-way mirror, Inbau

et al. (2013) continue to recommend it in the room design. As Kassin (1997) noted, the design of the room "promotes feelings of social isolation, sensory deprivation, and a lack of control" (p. 222) for the suspect. Interrogations typically occur in these small, stressful, isolated spaces (Leo, 1996b).

In order to better understand the interrogations at the center of the totality of the circumstances approach, we briefly introduce the nine-step interrogation process designed by Inbau (1942) and colleagues (e.g., Inbau & Reid, 1967; Inbau et al., 2013). It begins with positive confrontation, in which investigators directly confront the suspect with their guilt. As noted previously, John E. Reid & Associates, Inc. (2018a) claim to have trained thousands of police officers, individuals who work in fraud and loss prevention, and others (e.g., university deans, human relations officers in corporations, etc.). Despite the widespread nature of this training, we first review some ways that this training becomes individualized for many officers.

Too often, scholars may assume that all police officers use tactics from John E. Reid & Associates, Inc., as the company presents in training (Wallace, 2010). Some officers do. As one experienced interrogator informed us, "when I started I followed Reid like it was a cookbook" (Anonymous Officer, personal communication, June, 2012). But formal training is only one avenue by which officers learn interrogation tactics. New officers generally work with more experienced officers, and from these mentors they may learn new tactics beyond the formal training they received at the academy or from formal trainings. Officers may also learn new ways to apply previously known tactics or even new theories and worldviews about categories of suspects and crimes. Throughout their careers, we expect officers to grow in their understanding and use of strategies across many areas of policing and particularly in the complex and difficult arena of interrogation. We agree with trial consultant and retired police detective Wayne Wallace (2010), who argued, "The skills, methods, and nuances comprising the art of police interviewing [and interrogation] take years of experience to refine, and the result is an amalgam of techniques that combine with an [officer]'s personality" (¶10). In short, officers are less like cooks at a chain restaurant (i.e., cooks who must follow a very specific recipe to create a dish that tastes the same in every city) and more like mental health counselors. Similar

to therapists, we expect police officers to be individual, flexible, creative practitioners who fit their choices of tactics to the individual suspect, the crime, what is known about the evidence, and their own strengths and weaknesses. With these caveats about the practice of interrogation in mind, we now turn to a concise review of the methods taught by John E. Reid & Associates, Inc.

John E. Reid & Associates, Inc. (see Inbau et al., 2013) describe nine specific steps in interrogation, which, as discussed previously, is used only with suspects who are believed to be guilty as determined by evaluations of their behavior during the BAI. As they noted in their most recent edition (Inbau et al., 2013), not all steps are required during an interrogation, nor do the steps have to be presented in this order. Detailed studies of interrogation processes also suggest that interrogation is a dynamic and rapidly changing process as interrogators employ multiple strategies and suspects vary the degree to which they cooperate (Kelly, Miller, & Redlich, 2016). Inbau and colleagues (2013) use the concept of totality of the circumstances to suggest that a suspect's behavioral and verbal responses to questions should determine an interrogator's flexible and adaptive choices of strategy.

In contrast with the open-ended questions in the BAI, Inbau et al. (2013) recommend initiating the interrogation with an explicit and direct confrontation of the suspect with their guilt, which Kelly et al. (2013) categorize under the domain of Confrontation and Competition. Jayne and Buckley (2017) recommend that officers take a short break between interview and interrogation, that officers should consider holding a file or other materials that could contain conclusive evidence of guilt (i.e., a false-evidence ploy), and that officers should open with a statement that is "brief, exact, and unequivocal" (p. 11). They also recommend that the officers continue to maintain their appearance of confidence in the suspect's guilt.[10]

Immediately following direct confrontation of the suspect, Inbau et al. (2013) recommend that officers present interrogation themes to the suspect. An interrogation theme introduces a moral justification for the crime and minimizes the suspect's culpability. Jayne and Buckley (2017) recommend that officers show understanding, sympathy, and compassion when presenting themes. For example, if interrogating a suspect for workplace theft, the interrogator may remind the suspect of the way

their employer underpays employees, suggesting that employees who steal may do so out of necessity rather than moral failure (see Inbau et al., 2013, and Jayne & Buckley, 2017, for additional examples).

Importantly for understanding our totality of the circumstances approach, themes are typically specifically tailored to each suspect and their crime. Jayne and Buckley (2017) note that many spontaneous confessions to crimes include moral justification, and this observation guides their larger claims. They argue that "For a suspect to relate to a theme, the suspect must have already justified the crime in some way" and that "the interrogator's theme is merely reinforcing existing beliefs which are already present in the guilty suspect's mind" (Jayne & Buckley, 2017, p. 418). If an interrogator introduces a theme that does not lead to engagement by the suspect, the interrogator may need to switch themes until finding a theme to which the suspect responds. During the initial interview, the interrogator may attempt to determine the values the suspect holds, and interrogators may bring these values into suggested themes. For example, interrogators may suggest to a religious suspect that a confession will bring the suspect closer to God.

Sometimes themes may raise questions. As experts who have evaluated confession evidence, both authors have observed the use of themes that generate concerns. For example, officers may suggest that a suspect accidentally committed a crime, as recommended by Jayne and Buckley (2017). Of course, if the suspect agrees with this claim, the suspect has then admitted to criminal behavior, and the officers would then move to asking the suspect about criminal intent. Themes are intended to minimize the perceived severity of the crime, and this minimization of the moral and/or legal severity of the crime has important consequences. These tactics lead to increased false confession rates in experimental studies (Horgan, Russano, Meissner, & Evans, 2012). Another important point about themes is their presence in documented false confessions (Appleby, Hasel, & Kassin, 2013). Innocent suspects have incorporated interrogation themes suggested by police into their confessions, which in turn contaminates the confession. These findings suggest that this step may not be as innocuous as it appears.

The third step, following direct confrontation and presentation of interrogation themes, is to handle denials. Based on anecdotal observations, likely with their roots in Inbau's extensive observations of Reid's interrogations and polygraph examinations in the mid-twentieth

century (Slowik, 2015; Woody, 2019), proponents claim that "The more often a suspect denies his [or her] involvement in an act, the more difficult it becomes for him [or her] to eventually tell the truth" (Jayne & Buckley, 2017, p. 13). Therefore, Inbau et al. (2013) recommend that officers interrupt and prevent the suspect from denying involvement in the crime. As is evident in claims by Jayne and Buckley (2017), in which the authors generally assert that "the truth" includes a confession to the crime, supporters of John E. Reid & Associates, Inc., assume that predominantly or only guilty suspects will face interrogation. Despite claims by Jayne and Buckley (2017) that "the innocent or truthful suspect will not move past" this step (p. 16) because officers will accurately identify innocent suspects based on their actions during this step, many cases we review throughout this book suggest otherwise.

When faced with repeated interruptions of all denials, the suspect may shift from defensive to offensive tactics—from denials to objections to the officers' claims. Therefore, the fourth step involves overcoming objections. Suspects may offer emotional, factual, or moral objections to the accusations of the interrogators. Inbau et al. (2013) recommend that, rather than refute these objections, interrogators should incorporate the objections into the existing interrogation themes. For example, if the suspect makes an emotional objection to corporate theft charges by claiming to love their job, the interrogator can support the suspect in this claim and then minimize criminal intent by emphasizing a theme: the suspect is indeed a good person and a hard-working employee who only reluctantly stole from the company they love because they were underpaid.

As is evident from descriptions of steps three and four (in which interrogators interrupt denials and overcome objections), suspects may then disengage and become quiet. Therefore, to keep the suspect's focus on the interrogation theme, at step five Inbau et al. (2013) recommend that officers capture and retain the suspect's attention. Jayne and Buckley (2017) recommend closing the physical distance between the officer and the suspect, among other tactics. As officers keep the suspect's attention on the theme, officers may focus ahead to how to shape the alternative question in step seven.

In response to suggested themes, interrupted denials, overcome objections, and interrogator actions to keep the suspect's attention

(i.e., steps two, three, four, and five), suspects may become withdrawn and passive. Step six (Inbau et al., 2013) focuses on handling the suspect's passive mood. Rather than leave the room, officers are encouraged to stay with the suspect, who may cry, show postures associated with defeat (e.g., hanging their head and slouching the shoulders), and otherwise appear depressed and sad. Officers are encouraged to show sympathy, keep the suspect focused on the interrogation theme, and lay the groundwork for the alternative question in step seven.

Step seven is the crux of the interrogation. It presents what Inbau et al. (2013) call an alternative question intended to lead to an admission. An admission is a statement of fact that suggests guilt, which can in turn open the door to a confession, a detailed report that includes elements of the crime and describes the suspect's participation (see e.g., Slough, 1959).

Inbau et al. (2013) call these alternative questions, even though others call them compound questions or double-barreled questions. A compound question appears to be a single question, but it contains a hidden question that is often overlooked by the target. For example, one author was asked the following compound question by officers at an international border: "Did you bring your [contraband]?" This apparent single question actually contains two questions. First, does the individual posses contraband, and, second, did the individual bring contraband to the border? The compound question appears to be a simple yes/no inquiry, and an answer of "yes" (i.e., an explicit confession to illegal behavior—attempting to cross this international border with contraband) would lead to legal consequences. A response of "no," however, is not a simple resolution. A "no" response conveys to the officer that 1) the traveler owns contraband but 2) did not bring it along. In this particular international setting, being identified in this way would have led to additional scrutiny. In short, answering either "yes" or "no" to this yes/no question would lead to additional investigation and potential legal consequences, despite the author's lack of any contraband. The only way to avoid legal complications was to actively step outside of the format of the question—ignoring the legitimate authority of the questioner—and state "I do not possess contraband."

Part of the power of compound or alternative questions emerges from the illusion of simplicity. A police officer who asks a suspect "Do you

still engage in [an illegal behavior]?" is a legitimate authority who appears to be seeking a yes/no answer. But answering "yes" is an admission to illegal behavior, and "no" suggests that the suspect formerly engaged in that behavior and remains worthy of investigation. These approaches sit at the heart of the alternative question in step seven.

John E. Reid & Associates, Inc. (see Inbau et al., 2013) recommend that police interrogators connect the alternative question to the interrogation theme. An alternative question typically avoids questions of guilt. Rather, it assumes guilt and presents a choice of motives for the suspect In the corporate theft example presented above, a powerful alternative question may appear as follows: "You keep saying that you love your job despite being underpaid, and I believe you. I know you are a good person who is facing tough economic times. I have to ask. Did you do this to provide for your family despite being underpaid, or are you simply a criminal?" Although this question appears to offer the suspect two distinct options, either option (i.e., "I did this because I am a criminal" or "I only did this because I am too underpaid to support my family") is an admission to the crime and opens the door to a more complete confession.

Several prominent false confessions have appeared to hinge on alternative questions. For example, interrogators asked Livers if he committed the murders by himself. He then informed them that he did not do it alone, suggesting that he was indeed involved along with an accomplice. The only innocent answer to this yes/no question requires stepping outside of the structure of the question to state that he did not commit the crime. Can we expect a vulnerable suspect with a cognitive disability, who is also fatigued in a long interrogation, to navigate this verbal terrain? As in the border-crossing example, in these cases, *any* answer that follows the structure of the question indicates guilt. Inbau et al. (2013) and others argue that innocent suspects will step outside of the question format rather than falsely confess.

Once the suspect has responded to the alternative question with an admission to the crime, the remaining two steps complete the interrogation and confession process. Step eight involves discussion and expansion of the admission to include additional details of the crime—transforming the admission into a detailed confession. Step nine

includes the conversion of the oral confession into a written narrative that is intended to be admissible in court.

Of course, police have important expectations for the confession. The confession should include sufficient detail to allow for corroboration (i.e., the comparison of the confession to the known evidence to verify the confession). Additionally, confessions generally include motivational details (i.e., motivations and justifications of the crime), emotional details (i.e., the suspect's descriptions of their emotional responses during planning and commission of the crime—including potential excitement, guilt, and fear), and sensory details (i.e., reports from the suspect about what they saw, heard, smelled, etc. during planning and commission of the crime). Police expect that a confession will include these factors, and they generally seek these details when taking confessions. Recent scholarship supports their assumptions; confessions with greater details affect jurors more powerfully (Appleby et al., 2013). It is not surprising, therefore, that both true and false confessions share these characteristics (Appleby et al., 2013); we return to these issues through the book.

Conclusions

In this chapter, we have examined the totality of the circumstances of police interrogation. We will refer to these processes throughout the book, and we examine the consequences of these steps for suspects, for police who must corroborate confessions with evidence, and for the people who must make decisions about confession evidence at trial and on appeal. We now turn to discussion of police deception during interrogation, which became foundational in the United States in the mid-twentieth century and continues to the present.

3

Deceptive Interrogation Tactics

No one expects to see news coverage of a mass murder over the lunch hour. Yet in August, 1991, that is exactly what happened to residents of Waddell, Arizona, and nearby Phoenix. Radio and local television stations began breaking into regular programming to cover the horrifying crime. Six Buddhist monks, a nun, and two young men lay face down on the floor of a great room at the temple. All had been shot at least twice in the head. Based on evidence at the crime scene, officers inferred that multiple perpetrators had committed this violent act using both a shotgun and a .22-caliber rifle. Nearby bedrooms had been trashed, and some of the monks' personal items appeared to be missing. Beyond the bullet casings, footprints, and the word *blood* carved in the temple wall, little evidence existed. Under significant pressure to solve the case quickly, the Maricopa County Sheriff's Office created a task force that grew from a few local officers and state officials to a 226-member team of local and federal law enforcement personnel (Stuart, 2010).

As in many cases, the task force turned to the community early on. One promising lead to the department came from a caller who referred to himself only as "John." He initially talked about Kelsey Lawrence, a client at a local facility for the residential treatment of people with psychological disorders. According to "John," Lawrence had been talking about the monk murders. It soon became clear to the task force that both John and Kelsey Lawrence were false identities and that the person they were talking to was Mike McGraw. Although he later confessed to the crime, many of the confession details were inconsistent with both the evidence and interrogators' expectations. Interrogators would then seek to correct the misinformation in McGraw's confession by asking detailed questions, which provided case information to McGraw. Different interrogators questioned McGraw over three days with only two to three hours of rest each day. He eventually identified four acquaintances as co-conspirators. Peter Sherfield (soon to be replaced by

Dante Parker), Mark Nunez, Leo Bruce, and Victor Zarate soon joined McGraw in the sheriff's office. The task force was armed with multiple interrogation rooms and several pairs of interrogators. When one set of interrogators became tired, they left, and another pair entered. This allowed the interrogators to take breaks while at the same time preventing the suspects from having any respite. Between sessions, task force members isolated individual suspects in a cramped prop room (an interrogation tactic discussed later in this chapter), which was packed with what appeared to be overwhelming evidence of the suspects' guilt. Examples included files labeled with their names, crime scene photos and diagrams, suspect mug shots, and a wall-sized flow chart depicting the hypothesized relationships among the suspects.

These interrogators relied almost exclusively on deception to educe confessions from their suspects, and, although we describe the different kinds of police deception using the interrogations surrounding this crime as examples throughout this chapter, this brief introduction to the Tucson Four does not do the case justice (see Stuart, 2010). Examples of some of the lies and lies by omission used by task force members include:

- Recording interrogations without telling the suspects.
- Specifically telling suspects that interrogators were *not* there to lie to them and that the police could be trusted, even as officers employed multiple deceptive strategies.
- Implying that other suspects were getting ready to confess and that each particular suspect had only a limited-time offer to receive leniency for confessing.
- Indicating that the *Miranda* warning and waiver of rights were merely formalities.
- Falsely informing Leo Bruce that statements from the other suspects had already been taken and that the evidence had matched those statements.
- Having other interrogators interrupt interrogations by walking into the room and announcing up-to-the-minute updates about false evidence, false claims that accomplices confessed, or false eyewitness identifications.
- Explicitly threatening Parker that if he did not cooperate he would get the death penalty; more specifically, they threatened him with the gas chamber even though the state used lethal injection.

- Telling Zarate that neither his boss nor girlfriend had confirmed his alibi, even though police had not contacted either person.
- Suggesting to Zarate that his girlfriend was seeing one of the other suspects.
- Walking the suspects by one another in the sheriff's office to lead suspects to infer that one was testifying against the other.
- Playing segments of interrogation recordings to convince one or more suspects that others were confessing and identifying them as perpetrators.

What makes this case stand out from so many others is that the same interrogation strategies that caused four men to confess falsely to murder (e.g., extensive overnight questioning despite extensive fatigue, the use of the evidence room, multiple deceptive strategies including false-evidence ploys) were also used on the juveniles later arrested for the crime. Forensics testing had just cleared Bruce's rifle when a separate weapon, owned by Rolando Caratachea and confiscated by the sheriff's office, was linked to the crime. The .22 bullet casings from the crime scene were fired from Caratachea's gun. Caratachea explained that he loaned the gun to friends: Alessandro "Alex" Garcia and Johnathan Doody. Although 17-year-old Caratachea referred to his friends within the first hour of his interview, he was questioned without a parent present for the next 17 hours. Soon the task force members were questioning all three juveniles and using many of the same deceptive strategies previously discussed. Then interrogators began asking all three boys how they might know the suspects from Tucson. The police showed the boys binders of the men's confessions, and Garcia eventually agreed—falsely—that the original suspects, the Tucson Four (Leo Bruce, Mark Nunez, Dante Parker, and Michael McGraw), were also involved. The police were not willing to give up McGraw's original confession, and, if the information gleaned from the boys did not corroborate the confession, interrogators ignored the new information. As police continued to focus on the Tucson Four, they also pursued existing and new cases, including the 1991 murder of Alice Marie Cameron, who was killed at a local campground for $1 and change (Sahagun, 1993). This homicide remained unsolved through 1992.

In 1992, Joe Arpaio became the new sheriff of Maricopa County and was an outspoken critic of how the task force and sheriff's office handled

the Temple murder case. Arpaio went so far as to apologize to the Tucson Four and order an "investigation of the investigation" (Stuart, 2010, p. 175). Alex Garcia, one of the juveniles who had borrowed the gun from Caratachea, eventually accepted a deal. Prosecutors would take the death penalty off the table if he would testify against Johnathan Doody. Doody went to trial not once but three times. During his 1993 trial, he was convicted and sentenced to 281 years in prison. In 2008, Doody's conviction was overturned because his 1991 confession was ruled as coerced. Although the state appealed, the Ninth U.S. Circuit Court of Appeals ruled that the conviction should remain overturned. His second trial ended in a hung jury, and the judge declared a mistrial. In March 2014, although Doody's coerced confession was not admitted at trial, he was convicted based on Garcia's testimony alone (Stuart, 2010).

Would the outcome have been different if the task force had spent less time investigating the Tucson Four and had been less dedicated to Mike McGraw's ever-changing story? What if they had used less deceptive and less coercive interrogation methods? False confessions influence subsequent events just as true confessions do. If police had focused less on the Tucson Four and more on the evidence, they may have tested Caratachea's rifle much sooner. Alex Garcia and his girlfriend would not have had the opportunity to murder Alice Marie Cameron, which Garcia finally admitted in 1993 (Sahagun, 1993), and, had Johnathan Doody's interrogation not been coercive, his confession may have been included at trial. Doody continues to profess his innocence. We may never know the truth.

In this chapter, we consider definitions of deception and the nature of deception in police interrogation settings. Can deception ever be *completely* removed from police interrogation rooms? Next, as depicted in the sections of the model we address in this chapter, we explore police deception surrounding *Miranda* warnings, common misunderstandings of *Miranda*, and the increased vulnerabilities that result from these misunderstandings. Then we evaluate legal deceptive tactics commonly used in police interrogations. In particular, we consider minimization, maximization, implied threats and implied promises, and the most controversial legal form of deception during interrogation, the false-evidence ploy (FEP). We focus on this tactic due to its effectiveness at inducing both true and false confessions in the laboratory as well as

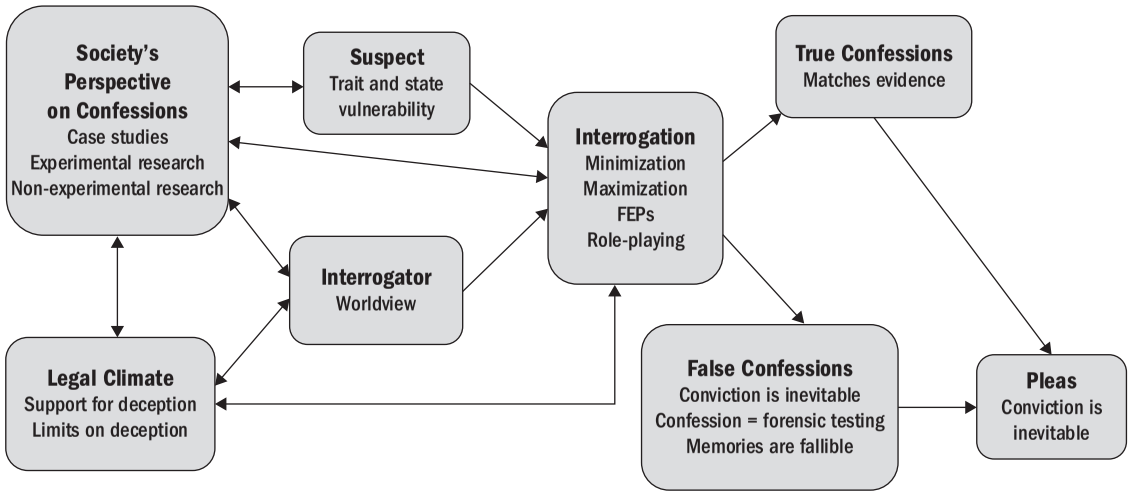

Figure 3.1. The Influence of Confession Research, Legal Climate, Suspect and Interrogator Characteristics, and Interrogation Tactic on Confessions

in actual police interrogations. We also consider deception about polygraph evidence as a powerful FEP. To evaluate these forms of deception, we will introduce the larger body of experimental interrogation scholarship, including its strengths and weaknesses as well as what we can and cannot learn from experimental research. Throughout this chapter, we will consider courts' responses to police deception. We will conclude this chapter with a review of the totality of the circumstances, including the ways that deception in actual interrogation rooms is typically far more complex than deception in the laboratory.

Police Deception: Worldviews

As is evident throughout this book and emphasized in our final chapter, we oppose police deception during interrogation. We oppose the continued use of police deception on many grounds, including moral, ethical, and legal concerns, which are increasingly relevant in today's rapidly changing legal landscape. Our fundamental concern rests on the increased risk of false confession, a risk that is more severe for some suspects, including but not limited to juveniles and those with cognitive disabilities, mental illnesses, or limited legal education. This view places us in opposition to those who accept or even promote deception during interrogation. Throughout this chapter, we carefully consider arguments against our perspectives, we strive to present counter-arguments as their supporters would present them, and we acknowledge that ours is a minority viewpoint in the larger criminal justice system.

Unsurprisingly, our views about deception do not reflect views of a majority of police interrogators. Among others, Inbau et al. (2013) remain anchored to deception in many forms. As discussed earlier, the emphasis on deception runs through Inbau's early works and his intellectual descendants. "In dealing with criminal offenders, and consequently also with criminal suspects who may actually be innocent, the investigator must of necessity employ less refined methods than are considered appropriate for the transaction of ordinary, everyday affairs, by and between law-abiding citizens" (Inbau et al., 2013, p. xiv; cf. Jayne & Buckley, 2017, pp. 435–446).

Currently, police can conduct interrogations with few limits on deception, as discussed subsequently, although these practices and their

widespread acceptance appear to be changing. We open with a brief examination of a philosophical debate before turning to legal police deception about *Miranda* warnings.

Philosophical Considerations

The *Oxford English Dictionary* (2018) defines deception as the noun form of *to deceive*, which in turn is defined as "To cause to believe what is false; to mislead as to a matter of fact, lead into error." One concern is readily apparent. The definition of *deception* is extremely broad and includes what people call "white lies" as we discussed previously. People tell these lies often, and these minor deceptions function as important social tools. Given the prevalence of these lies and other similarly deceptive behaviors, how can we draw clear lines between acceptable and unacceptable deception using such broad definitions?

In police interrogation rooms, some forms of deception, such as FEPs, raise clear legal and scientific questions, but others may not. What about more common and presumably benign forms of deception? For example, is a police officer with clear evidence of Mr. Smith's guilt[1] being deceptive if the officer uses a respectful tone of voice to say, "Please step in here, Mr. Smith, and I'll join you in a moment"? If it is deceptive to act respectful and polite while building rapport, can deception ever be *completely* removed from police interrogation? These questions have led us to narrow our recommendation. Even as we recognize the challenges of completely removing deception from police interrogation, we recommend the removal of deceptive tactics from police interrogation. Examples include police lies about *Miranda* warnings, lies concerning crime severity and other details, deceptive role-playing, and lies about evidence. Several factors drive these recommendations, including the widespread impacts of police deception on suspects, police, and the criminal justice system as a whole.

Impacts of Deception on Officers and Communities

First, police deception may influence the police themselves (Paris, 1997). Law professors Jerome Skolnick and Richard Leo (1992) have raised concerns that permitting police deception during interrogations

may increase the likelihood that police will lie in other settings, such as at trial, in suppression hearings, to internal investigators, and to others (see also *State v. Cayward*, 1989; Gohara, 2006). Police may be more likely to lie even to other officers, district attorneys, and judges, obviously including those who support continued use of police deception. Second, police deception may affect suspects. Many individuals, including those who have been recently arrested and heard their rights as read to them by police officers, incorrectly believe that police cannot lie during interrogation (see Rogers et al., 2010; Slobogin, 1997).[2] Legal scholars have raised concerns that suspects who discover that police have lied to them may lose their trust—or their remaining trust—in police and the criminal justice system (Bok, 1999; Slobogin, 1997). Alternately, in response to police deception, suspects may employ more active countermeasures during or after interrogation, including increased lies to police, greater resistance, or even open aggression (Bok, 1999; Slobogin, 1997).

Beyond these individual responses, police deception can affect cultural views of police and law enforcement. As legal scholar Miriam Gohara (2006) argued, "If 'truth-seeking' is at the heart of our adversarial system of justice, then the question arises whether the official use of deception and falsehood should play any role in developing the prosecution's case" (p. 833). Particularly given the present tensions between police and communities (e.g., Alexander, 2014; National Network for Safe Communities, 2015), allowing police permission to lie to members of the community raises important concerns about the public's trust in and perceptions of law enforcement.

Most important, of course, is the risk of false confession. How can we evaluate this risk, particularly given the reliance on FEPs and other forms of deception that pervades police interrogation? In this section of the chapter, we review how police officers may deceive suspects during interrogation as well as the few existing legal limits to police deception.

Forms of Police Deception

Skolnick and Leo (1992) separated police deception during interrogation into eight categories. Their categories open with deception about

Miranda warnings. We have already laid the foundations for understanding these warnings and their limitations; now we turn to forms of deception about constitutional rights.

Miranda and Deception

Skolnick and Leo (1992) presented two legal forms of deception about *Miranda* warnings. The first form occurs when police depict the interrogation of a suspect of a crime as a voluntary, non-custodial interview, which does not require *Miranda* warnings.[3] In this way, police may gain a confession usable in court despite the lack of *Miranda* warnings (Leo, 2012). Police interrogation trainers are well aware of these limitations, with Inbau et al. (2013) even providing specific statements that have led courts to accept confessions without *Miranda* warnings. For example, if the officer makes a statement instead of asking a question—thus sidestepping the "interrogation" criterion of "custodial interrogation"—and the suspect confesses, then a court may accept this confession despite the lack of *Miranda* warnings (see Inbau et al., 2013, p. 400; see *State v. Ladd*, 1983, for a case from the North Carolina Supreme Court). Skolnick and Leo (1992) raise important questions about the effects of this form of deception, claiming, "Recasting the interrogation as an interview is the cleanest deceptive police tactic since it virtually removes police questioning from the realm of judicial control" (p. 5).

The second form of deception about *Miranda* involves its minimization (Skolnick & Leo, 1992). Officers may present a *Miranda* waiver as a minor administrative ritual rather than as a waiver of the suspect's foundational constitutional rights. For example, when one interrogator began questioning Nunez of the Tucson Four, he referred to *Miranda* warnings as a formality that he was sure Nunez had heard about on TV, "when it's blown out of proportion" (Stuart, 2010, p. 59). Similarly, police may present *Miranda* warnings in their own words (see *California v. Prysock*, 1981), reducing the likelihood that suspects would recognize the well-known warnings (Inbau et al., 2013). One experienced police interrogator who visited the Seminar in the Psychology of Interrogation and Confession demonstrated this approach and conversationally provided *Miranda* warnings in a role-playing exercise. For example, rather than stating "You have the right to remain silent," he thanked the fictitious

suspect for coming in, stated that the suspect did not have to come in or to talk to him [the officer], and asked the suspect if the suspect understood. The former officer's complete *Miranda* presentation was so effective (i.e., he explained all of the elements of *Miranda* to a fictitious suspect without any signs that these were the familiar *Miranda* warnings) that when he was done the students spontaneously applauded. These minimization strategies are particularly relevant because, as we noted earlier, even without deception, *Miranda* warnings provide only limited protection.

Beyond these two methods, other deceptive tactics about *Miranda* warnings remain available to police. For example, an officer in the Tucson Four case provided *Miranda* warnings to a juvenile, Rolando Caratachea, while inserting questions about Caratachea's career plans between the warning statements (Stuart, 2010). Police may also deceive suspects by stating that they intend to question the suspect about a lesser crime, while temporarily hiding their intent to question the suspect about a more serious crime (*Colorado v. Spring*, 1987; Woody, Forrest, & Stewart, 2011).

For another example of deception about *Miranda*, police officers do not need to provide *Miranda* warnings if they portray a fellow inmate in a prison setting to encourage a suspect to confess (*Illinois v. Perkins*, 1990). In this case, the U.S. Supreme Court reviewed the totality of the circumstances and concluded that "*Miranda* forbids coercion, not mere strategic deception by taking advantage of a suspect's misplaced trust in one he supposes to be a fellow prisoner" (p. 297). In this ruling, the Court also noted that statements to undercover officers did not require *Miranda* warnings (*Illinois v. Perkins*, 1990). We return to additional concerns about police role-playing later in this chapter.

The U.S. Supreme Court has also evaluated deception concerning suspects' access to counsel as required by the Fifth and Sixth Amendments (*Escobedo v. Illinois*, 1964). In *Moran v. Burbine* (1986), police did not inform Brian Burbine of his attorney's attempts to contact him, and they falsely informed the attorney that the suspect would not be interrogated until the next day. Despite police deception of both the suspect and the attorney, the U.S. Supreme Court upheld the suspect's *Miranda* waiver as valid, ruling that this deception did not affect the suspect's knowledge of his constitutional rights. The Court noted that the suspect holds the Fifth

and Sixth Amendment rights to counsel, not the attorney, and that police deception of the attorney did not warrant suppression of the confession from trial. Additionally, because Burbine did not know his sister had procured an attorney for him, he could still make a knowing and valid waiver of his constitutional rights, including his right to an attorney. This form of deception is particularly powerful, because once *Miranda* rights are waived, the constitutional protections provided by *Miranda* cease unless or until the suspect re-invokes their rights (Leo, 2012).

Beyond these deceptive tactics, there exist other forms of deception about *Miranda*, particularly deception by omission. As psychological researcher Richard Rogers et al. (2010) found, a *majority* of suspects who had recently been read their rights fail to understand at least some critical aspects of those rights. Additionally, if suspects fail to understand but state that they do understand their rights, as many do, police are unlikely to detect this lack of understanding. These factors have the biggest impacts regarding suspects' understanding of their right to remain silent.

Too often, people apply a commonsense perspective rather than a constitutional perspective to their understanding of the Fifth Amendment (Rogers et al., 2010). Imagine that you are a 17-year-old climbing back into your bedroom at 2:00 a.m. after a night of rule breaking. You silently climb through the window to find your mother waiting for you. When she asks what you were doing, you look down and refuse to answer. What does your mom conclude about your guilt? To speak colloquially, you are now busted. This commonsense perspective, however, does not apply in the United States legal system, where a defendant's silence is *not* incriminating. Yet interrogators often imply that innocent suspects should want to explain the situation and therefore be willing to talk during an interrogation. We examine this implicit promise below—the implication that talking to police will benefit the suspect.

These general principles about the legal right to silence come with an important caveat, however. We discuss this legal issue here, although it does not require deception by police. This fundamental change to rights to silence is relatively recent (*Salinas v. Texas*, 2013). Police accused Genovevo Salinas of a double homicide. They did not arrest Salinas, he agreed to answer their questions (i.e., they interrogated him while he was not in custody), and they did not provide *Miranda* warnings. When

they asked him about evidence related to the homicides, Salinas looked down, shuffled his feet, bit his lip, clenched his hands, and did not answer (*Salinas v. Texas*, 2013). Rather than view his silence as part of his constitutionally protected right against self-incrimination, the prosecution introduced his silence and his accompanying behaviors at trial as evidence of his guilt. As discussed previously, these behaviors are *not* reliable indicators of deception, even if they were presented as such at trial. The U.S. Supreme Court issued a divided 5–4 opinion, with the majority upholding the admission of Salinas's pre-arrest, pre-*Miranda* behavior at trial. Despite a dissent that included reference to *Quinn v. United States* (1955, p. 164), which indicated that there was not a specific "ritualistic formula" required to invoke privileges against self-incrimination, the majority wrote that Salinas had to claim explicitly that he was invoking *Miranda* protections to receive those protections (see Chemerinsky, 2013). As of this writing, any suspect who has not received a *Miranda* warning and who seeks to invoke their Fifth Amendment privilege against self-incrimination must state this explicitly before responding to any questions from police.

How many people accused of criminal behavior are aware of these recent changes in law? For example, in Leo's (1996b) sample, 87% of suspects were from lower- or working-class backgrounds and likely face economic difficulties seeking any university or formal legal education. Some suspects may face particular risks in these interrogation settings, particularly juveniles, adults with cognitive disabilities, and adults with mental illnesses. Another concern noted by some observers is that this ruling may provide incentives for police to increase questioning before *Miranda* warnings, even with uncooperative suspects, in order to bring the suspect's silence and behaviors during that silence into court as evidence of guilt (Cowen & Park, 2013). Whether the U.S. Supreme Court will continue to uphold this new interpretation of the Fifth Amendment remains unknown.

Deception in Interrogation

Skolnick and Leo (1992) continue their categorization of police deception by enumerating forms that occur in police interrogation rooms.[4] Police may minimize or maximize the legal and/or moral severity of the crime. Although Skolnick and Leo (1992) separate legal and moral

severity and although they combine maximization and minimization for each strategy (i.e., legal or moral), below we discuss an organization that follows experimental literature.

Another type of deceptive tactics identified by Skolnick and Leo (1992) includes role-playing by police officers to appeal to the suspect's conscience or playing the role of a fellow criminal in a jail setting to appear trustworthy and invite a confession. Yet another form of deception that appears to be widely used is the use of implied threats for failure to confess or implied promises of leniency for confessing.[5] These tactics cannot include explicit threats or promises, and this prohibition rests on long-standing and widely recognized legal precedents (see *Bram v. United States*, 1897). Finally, and most controversially, police officers may use FEPs and may claim to have inculpatory evidence even when no such evidence exists. We examine FEPs in more detail below.

Deceptive Police Practices

Several studies of police interrogation practices reveal widespread use of deception. Kassin et al. (2007) surveyed 631 police detectives from across the United States about their interrogation behaviors, including a wide range of deceptive behaviors (see also Cleary & Warner, 2016, for similar findings from detectives' self-reported uses of deceptive and other tactics). Some deceptive behaviors were nearly ubiquitous. For example, 89% of detectives reported minimizing the moral severity of the crime at least some of the time. Police reported other deceptive tactics less frequently; for example, 49% reported "having the suspect take a polygraph and telling him that he failed it" (Kassin et al., 2007, p. 388, Table 2; see discussion below), and 50% of officers reported threatening suspects with consequences for failures to cooperate. As discussed earlier, courts accept confessions induced with implicit but not explicit threats and promises (Inbau et al. 2013; *Bram v. United States*, 1897). In the Tucson Four case, interrogators suggested the possibility of the gas chamber as a reason to confess. Another particularly powerful finding was that 92% of police interrogators reported lying about evidence at least some of the time (Kassin et al., 2007). In a separate study, psychological researchers Hayley Cleary and Todd Warner (2016) evaluated what they called "aggressive techniques" (e.g., "*presenting false evidence,*

using deceit, and *moving physically closer to the suspect*") and noted that "these aggressive techniques are used with similar frequency with juvenile suspects as with adults" (p. 280, italics in original; see also Meyer & Dickon Reppucci, 2007). Later we will examine specific concerns about the use of these tactics, particularly deceptive tactics, with juveniles and other vulnerable suspects. Cognitive and social developmental differences between juveniles and adults, particularly regarding risk-taking, self-regulation, and susceptibility to social influence (Steinberg, 2017), shape their increased vulnerability. We now examine a particularly controversial deceptive interrogation tactic, the false-evidence ploy.

False-Evidence Ploys

What is arguably the most controversial interrogation tactic allowed in the United States remains one of the most commonly used: a false claim to have evidence that implicates the suspect (Kassin et al., 2010; Leo, 2008; Woody & Forrest, 2009). As we have discussed, in the mid-twentieth century, FEPs were viewed as a positive yet deceptive alternative to physical coercion, and FEPs hold a foundational role in the techniques developed by Inbau and Reid (Inbau, 1976; Inbau & Reid, 1967; Leo, 1992; Woody, 2019).

Despite widespread use by police and acceptance by courts, as described subsequently, FEPs generate concerns. Evidence to support these doubts comes from the body of experimental literature as well as archival analyses of actual interrogations, confessions, and trial outcomes, which demonstrate that FEPs "have been implicated in the vast majority of documented false confession cases" (Kassin et al., 2010, p. 12; see also Kassin, 2005). Jury-eligible observers view FEPs as highly deceptive and coercive (Woody & Forrest, 2009; Blandón-Gitlin, Sperry, & Leo, 2011; Forrest et al., 2012; Leo & Liu, 2009).

Across a series of programmatic studies (Woody & Forrest, 2009; Forrest et al., 2012; Woody, Forrest & Yendra, 2013; Woody et al., 2018), Woody, Forrest, and colleagues have categorized FEPs in multiple ways. First, they categorized FEPs by the form of fabricated evidence (Woody & Forrest, 2009; Forrest et al., 2012). Testimonial FEPs involve claims to have an eyewitness, co-conspirator, video-recording, or other accessible record of the defendant committing the alleged crime.

Scientific FEPs rely on false claims of scientific evidence (e.g., DNA, fingerprints), and demeanor FEPs reflect false claims by police to be able to read the suspect's behavior and accurately infer guilt.[6] When Forrest et al. (2012) asked participants to rate the perceived coerciveness of various FEPs, participants viewed testimonial FEPs as more coercive than demeanor FEPs, whether read on a list of potential tactics or embedded in realistic interrogation transcripts; scientific FEPs did not differ significantly from either testimonial or demeanor FEPs. Forrest et al. (2012) suggested that this finding may relate to media coverage of the limitations of eyewitness testimony. Given the difficulties inherent in eyewitness reports, participants may have viewed attempts to use false eyewitness evidence to influence a suspect as particularly coercive. Additionally, Forrest et al. (2012) found that outcome information affected participants; those who read that these tactics lead to true confessions viewed the tactics as less coercive and deceptive than those who read that these FEPs lead to false confessions.

Other ways to categorize FEPs follow from the nature of the FEPs themselves. For example, FEPs may be explicit or implicit. Explicit FEPs are direct claims to have evidence implicating the defendant (e.g., "we have your DNA at the crime scene"; "we have a video-recording of you breaking into the store"). Most experimental and archival research as well as most legal and constitutional analyses have addressed explicit FEPs (for reviews see, e.g., Kassin et al., 2010; Kassin & Gudjonsson, 2004; Leo, 2008; Skolnick & Leo, 1992).

In contrast with explicit FEPs, implicit FEPs avoid the constitutional and legal risks of explicit claims to have evidence. Called a "bait question" by Inbau et al. (2013; Jayne & Buckley, 2017; Perillo & Kassin, 2011; Woody et al., 2013), an implicit FEP remains non-accusatory but presents evidence that could identify the guilty party and that could be checked later (Inbau et al., 2013). Jayne and Buckley (2017) recommend introducing the evidence as though it will soon exist (e.g., when detectives arrive at the scene) or as though it currently exists and will soon be tested (e.g., after detectives download the video-recording or after the analysis is complete). Strikingly, neither Inbau et al. (2013) nor Jayne and Buckley (2017) review legal or constitutional issues with implicit FEPs. This lack of analysis stands in stark contrast to the extensive page space they devote throughout their writings to defense of explicit FEPs (see

Inbau et al., 2013; Jayne & Buckley, 2017). Few scholars have investigated these questions. One scholar who did so raised concerns about the potential impacts of implicit FEPs and the lack of others' concerns about these tactics (Gohara, 2006). One police interrogator who spoke in the Seminar in the Psychology of Interrogation and Confession described this discrepancy exceedingly well: "why would you raise all of the legal and constitutional questions involved in an explicit claim to have false evidence when you could avoid all of that by just suggesting that there may be evidence?" (Anonymous police detective, March, 2015). It is important to note, however, that implicit and explicit FEPs affect suspects in similar ways (Perillo & Kassin, 2011) and that jurors evaluate implicit and explicit FEPs in virtually identical ways (Woody, et al., 2013), suggesting that implicit ploys carry the same power and risks as do explicit FEPs.

Another way to categorize FEPs is by whether they are simple or orchestrated. Simple FEPs are simply claims to have evidence that implicates the defendant. In contrast, orchestrated FEPs involve the suspect interacting with fabricated evidence. An orchestrated FEP occurs when police place suspects in an evidence room, a room that appears to contain an overwhelming amount of evidence against the suspect. As the interrogators questioned the Tucson Four in the Buddhist Monk murders, each suspect spent time in a room full of files, crime scene photos, and a flow chart with the names of the suspects and the victims, all designed to give the impression that there was overwhelming evidence of the suspects' guilt (Stuart, 2010). Another variation of the orchestrated FEP involves watching the suspect interact with fabricated evidence in the interrogation room. For example, one investigator shared a typical use (anonymous officer, personal communication, March 2013). When facing parents accused of abducting their own child, police would purchase an item of clothing similar to the one the child was last seen wearing, make the new item appear worn, and then place the item of clothing in the interrogation room.

Both of these orchestrated approaches allow police to engage in additional evaluation of the suspect as they interact with the evidence. As with previously described examples of behavioral analysis, officers believe that they can identify behaviors that separate factually innocent from factually guilty suspects. For example, Kirk Bloodsworth was accused of assaulting and murdering a child with a rock. During his first interrogation, police interrogators placed a rock covered in stage

blood in the interrogation room, believing that Bloodsworth's reponses to the rock would allow detectives to determine whether Bloodsworth was factually guilty. His interactions with the rock convinced police—incorrectly—of his guilt (Innocence Project, 2018b; Junkin, 2005). Bloodsworth, of course, was well aware that his behavior would likely appear guilty. After more than eight years in prison as an innocent man, he recalled his interrogation. "If I brought up the rock, asked about it, it would look like I knew something. If I didn't look at it, didn't ask about it; it looked like I was avoiding something. There was no right thing to do" (personal communication, 2007). We will return to this case as we discuss investigatory biases and more deeply examine the roles of biases and other cognitive factors in this case.

Leo (2008) argues that orchestrated FEPs carry additional influence with suspects, and experimental evidence supports this claim. Nash and Wade (2009) accused participants of cheating at a game. All participants were factually innocent, and researchers either informed participants that evidence existed to show them cheating or showed participants fabricated video of themselves cheating.[7] In this study, *all* participants falsely confessed, and participants who saw fabricated video evidence of themselves cheating were more likely to internalize or to believe their guilt (Nash & Wade, 2009). We concur with Leo (2008) that these tactics are more powerful than simple approaches. Of course, when facing an apparently reluctant suspect, officers may simply continue to add FEPs to provide the appearance of overwhelming evidence (Leo, 2008; Wagner & Forrest, 2010).

THE POLYGRAPH AS A SCIENTIFIC FEP

According to Leo (2008), the most common use of polygraphs in police interrogations is *not* as a deception detection tool but as a particularly powerful orchestrated scientific FEP. When the polygraph is used to elicit a confession, the machine is typically presented to the suspect as 100% or nearly 100% accurate (Kassin & Gudjonsson, 2004; Leo, 2008). Suspects may approach the polygraph in ways similar to *Miranda* waivers. As noted previously, innocent suspects are more likely than guilty suspects to waive their rights; they may be similarly likely to agree to a polygraph examination. Polygraphists may also conduct a polygraph examination and then lie to the suspect about the results, as discussed below.

Alternately, polygraphists may use the intimidation inherent in a suspect's interaction with the polygraph without following protocols for deception detection. It is important to note that some officers have now faced loss of qualified immunity and other consequences for inducing false confessions with these uses of the polygraph (see e.g., Bandler, 2014a, 2014b). In these uses of the polygraph as an FEP, police inform a suspect that the polygraph is completely accurate, conduct an actual or fabricated polygraph examination, and then, regardless of the actual results, inform the suspect that the infallible or nearly infallible test has indicated deception.[8] Either the polygraph examiner or the interrogator then encourages the suspect to confess in the face of this supposedly incontrovertible evidence.

Concerns about the polygraph as a coercive tool are not new. Cold War interrogation scholars Joost A. M. Meerloo (1956) and William Sargant (1957), writing from psychoanalytic and physiological perspectives, respectively, argued that polygraphs could substantally increase the risks of false confessions. Are these concerns justified?

Across several archival cases, suspects have confessed falsely when confronted with fabricated polygraph results that appear to conclusively demonstrate their guilt. As emphasized throughout this chapter, in the rich but imprecise world of actual cases the totality of the circumstances typically involves multiple interrogation strategies, including multiple deceptive strategies, and therefore it is difficult to connect any given individual's false confession directly to polygraph examinations. Despite these caveats, several cases generate concerns. John Kogut confessed falsely after being confronted with fabricated polygraph results (Bonpasse, 2013). Similarly, in the Deskovic case, as polygraph expert Charles Honts testified at the civil trial of the officer who conducted the polygraph examination (Bandler, 2014a, 2014b), the extended and coercive polygraph examination of 16-year-old Deskovic extended hours beyond any attempt to use the polygraph as a deception detection tool. As we examine in future chapters, some of the false confessors in the Norfolk Four case confessed after being told that the polygraph indicated they were lying, regardless of actual polygraph results (Wells & Leo, 2008).

In addition to these concerns, we briefly note another potential risk. Polygraph examinations may indicate deception or truth-telling, but they may also generate inconclusive results (American Polygraph

Association, 2015). Honts (2013) reports that the FBI and other groups recommend that officers interrogate suspects who generate inconclusive polygraph results as though those suspects are guilty. In contrast with this recommendation, however, approximately two thirds of inconclusive results are generated by innocent suspects (Honts & Schweinle, 2009). Therefore, in a majority of cases with inconclusive polygraph results, a suspect is likely to face officers who have unfounded but confident beliefs in the suspect's guilt, which in turn lead to more interrogative pressure and increased risk of false confession.

FEPS AND RISKS TO THE INVESTIGATION

Inbau et al. (2013) and Jayne and Buckley (2017) caution that misuse of an FEP can wreck an investigation. For example, if a guilty suspect fled the crime scene on foot, a testimonial FEP about a different escape (e.g., a false claim to have a video-recording of the suspect fleeing in a car) would inform the suspect that this question includes an FEP. The suspect may then infer that police do not have inculpatory evidence and may cease cooperation or otherwise resist interrogators. Uses of implicit FEPs (also called bait questions, Jayne & Buckley, 2017) appear likely to reduce these risks. Beyond these concerns, the largest questions surrounding FEPs involve false confessions.

FEPS AND FALSE CONFESSIONS: POTENTIAL CAUSES

As emphasized throughout this section, FEPs drive extensive concerns about false confessions, which in turn drive the controversies. There are at least three ways that FEPs can induce false confessions. First, as Gudjonsson (2003) noted, FEPs may lead suspects to believe that conviction is inevitable. Rogers et al. (2010) found that a majority of participants in their forensic sample (i.e., individuals to whom police had read their *Miranda* rights) mistakenly believed that it was not permissible for police to lie about evidence. For all suspects and particularly for those who erroneously believe that police cannot use FEPs (Rogers et al., 2010), false claims about evidence may appear to be claims about actual evidence. Even suspects who know they are innocent may not believe that they could prevail at trial and may therefore confess to seek the leniency implied by police interrogators. These suspects may even seek guilty pleas (Redlich, 2010; Redlich, Summers, & Hoover, 2010).

A second way that FEPs increase false confession rates is that innocent suspects may mistakenly believe that a confession will prompt a test of the evidence and subsequently reveal their innocence. Psychological researchers Jennifer Perillo and Saul M. Kassin (2011) review the interrogation, confession, and eventual acquittal of Todd Johnson (*Missouri v. Johnson*, 2001). During a 19-hour interrogation, police used an implicit scientific FEP; they informed Johnson that they had sent blood evidence found in his car to a lab for testing and that they would soon know the results. Johnson was factually innocent and knew that any blood found in his car could not have come from the victim. His "misplaced confidence that [his] admission [would] later be disproved" (Perillo & Kassin, 2011, p. 329) led him to believe that the DNA results and his actual innocence would save him. Johnson confessed. Of course, police carry no obligation to test the evidence—a suspect's confession is generally sufficient for conviction so long as it meets the standards for voluntariness and corroboration (*Missouri v. Johnson*, 2001; Perillo & Kassin, 2011).

A third way that FEPs induce false confessions is to prompt suspects to doubt their own memories and to induce false memories of the crime (Kassin, 2007; Wells & Leo, 2008). Scholars have induced false confessions that suspects mistakenly believe to be true using these methods.[9] How have courts viewed FEPs and other forms of deception?

Courts and Police Deception

Courts have examined police deception during interrogation in several contexts, and they have largely accepted confessions induced in part by deception with very few limits. When we note throughout this section that courts have generally failed to reject deceptive tactics, we are claiming "that the confessions [that these deceptive techniques] produce are admitted into evidence [at trial]" (Kassin, 2010, p. 233) and upheld on appeal. Courts, however, unlike experimental researchers, work in the extremely rich but far less precise world of actual cases. Therefore, courts must evaluate deception during interrogation as part of the totality of the circumstances, rather than as an independent interrogation tactic in a well-controlled experiment, as researchers evaluate tactics in the scientific literature reviewed below. Across a wide range of cases

and deceptive interrogation tactics, courts have placed few limits on interrogation.

There exist some explicit limits to police interrogation tactics, even if these specific precedents do not address police deception. As noted in the opening chapter, police may no longer torture suspects into confession (*Brown et al. v. Mississippi*, 1936), and police may not withhold food, water, or sleep from suspects (*Ashcraft v. Tennessee*, 1944; *Reck v. Pate*, 1961). Yet as recently as the 1990s, during the Buddhist Temple Massacre investigation, sleep-deprived suspects Bruce and Nunez were interrogated by alternating teams of detectives for days at a time (Stuart, 2010). These strategies appear particularly effective for inducing confessions, including false confessions, as in this case. Fatigue is an important factor in state vulnerability within interrogation simulation studies (Frenda, Berkowitz, Loftus, & Fenn, 2016).[10] In 1960, the U.S. Supreme Court raised questions about psychological coercion. The Court stated that psychological tactics can match the coercive power of physical tactics, dramatically claiming that "the blood of the accused is not the only hallmark of an unconstitutional inquisition" (*Blackburn v. Alabama*, 1960, p. 206).

The U.S. Supreme Court placed some early limits on police deception. In *Bram v. United States* (1897), the Court established precedent to reject confessions generated by explicit threats or explicit promises, even if police continued to use these tactics well into the twentieth century (Bunn, 2007; Chafee et al., 1969; Leo, 1992; Woody, 2019). This U.S. Supreme Court decision shaped the first interrogation manuals, which emphasized implicit threats and promises as replacements for explicit statements (e.g., Inbau & Reid, 1967; Inbau et al., 2013). Beyond these limits on explicit threats and promises, however, courts placed few limits on deception.

A central U.S. Supreme Court decision for police deception about evidence is *Frazier v. Cupp* (1969). In this case, police falsely informed Martin Frazier that his accomplice had confessed and implicated Frazier in the crime—a testimonial FEP. Frazier then confessed. In its divided decision, the Court noted that the deception was "relevant" to the Court's review within the larger "totality of the circumstances" (p. 739). The Court also stated, "The fact that the police [engaged in deception during interrogation] is, while relevant, insufficient in our view to make

this otherwise voluntary confession inadmissible" (p. 739). This precedent brought several important consequences. First, Inbau et al. (2013) continue to emphasize *Frazier v. Cupp* (1967) in their justification of deception during interrogation (see also Inbau et al. 2001; Jayne & Buckley, 2017). Second, other courts have cited *Frazier v. Cupp* (1967) in their review of other deceptive tactics, particularly FEPs. Third, this decision reinforced the importance of the totality of the circumstances rather than one particular interrogation tactic, the presence of deception, or another individual feature of any given case.

Many other relevant cases exist, and we examine only a few here (see Woody et al., 2011). In Indiana, an appellate court upheld the admission of the defendant's confession after police had played accomplices against each other (*Ward v. State*, 1980). In another form of deception, a suspect confessed after police falsely informed him that the homicide victim was still alive; despite expressing frustration with the police deception, the Iowa Supreme Court upheld his conviction (*State v. Cooper*, 1974). Beyond these cases, some courts have directly evaluated FEPs, which continue to drive extensive controversy.

The Supreme Court of Arizona upheld the admission of a confession at trial when the confession had been induced in part with a scientific FEP, a false claim that police found the suspect's fingerprints at the crime scene (*State v. Cobb*, 1977). Similarly, a California appellate court upheld a conviction despite police officers' false claims to have found the suspect's fingerprints at the crime scene as well as an array of other fabricated forensic evidence (*People v. Lira*, 1981). In *State v Jackson* (1983), a North Carolina court upheld the admission of a confession at trial despite police uses of a variety of scientific and testimonial FEPs (i.e., false claims about both incriminating bloodstains and eyewitnesses). This concise review of state and other court reviews suggests that, in harmony with the U.S. Supreme Court, other courts have placed very few limits on police deception.

Limits to Deception

Despite the many available options and widespread uses of deception during interrogation, there exist some legal limits to police deception. One limit reflects concerns about psychological coercion. As we noted

earlier, the primary transition in the mid-twentieth century was from physical coercion to psychological deception. Courts then extended their concerns about coercion to include psychological coercion (*Blackburn v. Alabama*, 1960). Here we review two cases with long-lasting impacts on limits of psychological coercion.

The first case is *Spano v. New York* (1959). Vincent Spano allegedly killed a former boxer who had stolen money from him and beaten him severely. A warrant was issued for Spano's arrest, and as police were looking for him he called a close friend who was in the process of joining the police force but had not yet completed the academy. His friend informed police superiors about the contact from Spano. The next day, when Spano turned himself in, he faced an eight-hour interrogation involving multiple officers and extensive stress. When Spano refused to confess, the superiors sought to use Spano's friend to inspire Spano to confess. His friend told Spano that without Spano's confession, the friend would lose his job, his livelihood, and his ability to support his pregnant wife and three children. Spano confessed. The U.S. Supreme Court ruled that the totality of the circumstances in this case, particularly the sympathetic appeal from his friend, rendered Spano's confession inadmissible. At this time, the Court wrote strongly about police deception in ways that appear rare across this review. "The abhorrence of society to the use of involuntary confessions . . . also turns on the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves" (*Spano v. New York*, 1959, pp. 1206–1207). The Court then ordered a new trial without the confession.

Another case that raised concerns about coercion is *Lynumn v. Illinois* (1963). In this case, police arrested James Zeno for marijuana possession. Police then offered Zeno, who had two prior felony convictions, leniency if he would identify another target for prosecution. The informant then visited Beatrice Lynumn's apartment building and returned to police with marijuana that he claimed to have purchased from Lynumn. When police arrested Lynumn, she denied the accusations until police changed tactics. They explicitly threatened her by telling her that if she did not confess she would lose custody of and state support for her young children. She then confessed. She later testified that she did not

know that police could lie and that she falsely confessed "because the police told me they were going to send me to jail for 10 years and take my children, and I would never see them again; so I agreed to say whatever they wanted me to say" (p. 532). The U.S. Supreme Court rejected her confession as involuntary and ordered the case back to the Illinois Supreme Court for review (*Lynumn v. Illinois*, 1963).

These cases appear to have only limited impacts. Some recent cases have included tactics that appear both deceptive and coercive to observers but were accepted by courts—by judges who presumably are familiar with these precedents. For example, the trial court admitted Adrian Thomas's confession at trial, despite the detectives' false claims that if Thomas did not confess his son's life could not be saved (his son had already died) and they would arrest his wife (Heyl, 2013/2014; *People v. Thomas*, 2014, see also *People v. Aveni*, 2014). The precedents set by *Lynumn v. Illinois* (1963) and *Spano v. New York* (1959) failed to prevent the trial courts from admitting Thomas's confession at trial, although both Thomas's and Aveni's confessions were later thrown out on appeal due to concerns about police deception (Heyl, 2013/2014). We further examine these legal limits and their effectiveness—or lack thereof—below.

A second limit on police deception and coercion is narrowly tied to how FEPs are enacted. With some explicit FEPs, police may show fabricated evidence (e.g., lab reports, witness statements) to suspects. Some uses of fabricated evidence in explicit FEPs have raised court challenges (see Gohara, 2006). In *State v. Cayward* (1989), the Florida District Court of Appeal, Second District, evaluated the evidence presented to the defendant and agreed with the trial court's rejection of the confession due to concerns about the impacts of this evidence on the suspect and others. The police showed Paul David Cayward fabricated forensic analysis results on official department letterhead; the fabricated results were indistinguishable from actual results. Unlike verbal FEPs, for which the appeals court expressed distaste, the Florida court ruled that FEPs involving authentic-looking fabricated physical evidence automatically rendered a confession involuntary. This case also prompted the appeals court to certify a question to the Florida State Supreme Court, which declined to hear the case (*State v. Cayward*, 1989). A similar case reviewed by a New Jersey appellate court

evaluated a fabricated audiotape with a police officer playing the role of an eyewitness who implicated the defendant; the audio-recording was indistinguishable from actual recordings of eyewitness interviews (*State v. Patton*, 2003). In *State v. Chirokovskcic* (2004), a New Jersey appellate court ruled similarly in a case involving fabricated DNA analysis.

Across cases in which fabricated evidence could be mistaken for real evidence in current or future litigation, courts have raised three general concerns (*State v. Cayward*, 1989; Gohara, 2006). First, creating false evidence raises important questions about due process and fairness. Second, this fabricated evidence could mislead other observers, including later police investigators, prosecutors and defense attorneys, journalists, and even future trial or appellate courts. Third, the Florida court noted that accepting fabricated evidence risked creating a "slippery slope" that could lead to fabrication of other important documents in other contexts such as lab reports, court statements, and warrants (Gohara, 2006, p. 834; Skolnick & Leo, 1992). Finally, a risk not recognized by the court comes from basic psychological research into memory, particularly years later. Repeatedly stating that false evidence exists may lead to memory errors on the part of the police investigators or even suspects, including incorrect beliefs that the evidence is real (see e.g., Pickrell, McDonald, Bernstein, & Loftus, 2017).

These two general limits on police deceptions—preventing excessive coercion and the fabrication of false evidence that is indistinguishable from actual evidence—have limited impact on police practices. The narrow guidance from courts has led to a range of legal responses, with legal scholars calling for more substantial limits on police deception (Slobogin, 2007; Thomas, 2007), elimination of police deception before *Miranda* warnings (Mosteller, 2007) or outside of extreme circumstances (e.g., Paris, 1997), and leaving the current—nearly unlimited—legal landscape unchanged (e.g., Magid, 2001). These disagreements have had little effect on police practice or the decisions of trial and appellate courts. Based on a review of the legal scholarship about police deception, legal scholar Laurie Magid (2001) considered the U.S. Supreme Court in particular and argued that "The Court has repeatedly declined the opportunity to place any specific limits on the use of deception during interrogation" (p. 1176). As we have discussed, these views are changing,

and police may soon face revisions to these limits or additional limits on police deception, but these legal outcomes remain difficult to predict.

Effects of Deception

To understand deception during police interrogation we rely on the science as well as studies of actual cases that involve police deception. Therefore, we now turn to the forms of scholarly inquiry that shape our knowledge about the impacts of police deception during interrogation. In particular, we explore the findings from experimental studies of interrogation and confession where we find substantial evidence to raise questions about the uses and consequences of police deception.

The Research

How should scholars study interrogation and confession? Much of the discussion of how to evaluate police deception rests on the methods of inquiry. As in other scientific fields, scholars hope that results from multiple methods lead to similar outcomes, particularly studies of actual interrogations and experimentally conducted interrogations. Our discussion of methods reflects a classical question from the history of psychology: how do we evaluate and balance our drives for both richness and precision (see Wertheimer, 1972)?

Case Studies

Some scholars have emphasized richness. Case studies providing detailed descriptions of individual confessions, including false confessions, are invaluable for scholars. For example, Garrett (2010) conducted thorough examinations of interrogation transcripts and trial transcripts for known false confessors (for other case studies, see also e.g., Scheck, Neufeld, & Dwyer, 2000; Wells & Leo, 2008; Warden & Drizin, 2009; Ferek, 2014; Stuart, 2010). Garrett (2010) was able to draw conclusions about the omnipresence of contamination in false confession cases and the limited protections provided by Miranda warnings and videorecording, among other issues, from this body of work. But the very richness that makes case studies so valuable also limits scholars' abilities

to generalize findings and to identify specific factors that lead to true and false confessions. For example, the interrogations and false confessions of the innocent sailors known as the Norfolk Four involved hours of interrogations for each suspect, including numerous interrogations and statements from some suspects (see Bikel, 2010), and thousands of hours of investigator time, court preparation, and legal proceedings. Discovering consistent factors that lead to false confessions in a range of diverse cases is difficult at best, even after thorough review of each rich, complex, and unique case.

Correlational Studies

A second approach includes correlational studies of personality and other characteristics associated with individuals who have falsely confessed. This approach has been fruitful for the identification of trait characteristics associated with increased vulnerability (e.g., suggestibility and hyperactivity associated with increased likelihood of false confession; Gudjonsson, Sigurdsson, Einarsson, Bragason, & Newton, 2010; Gudjonsson, Sigurdsson, Sigfusdottir, & Young, 2012). We will return to these findings as we examine the characteristics of individuals who are particularly vulnerable to false confessions.

Experimental Studies

A third strategy involves experimental research. The fundamental advantage of experimental approaches is experimental control. A review of 10 actual interrogations would likely reveal many factors unique to each interrogation. These include individual differences between suspects, individual approaches from unique interrogators, different crimes, vastly different forms and strengths of evidence to which police have access, and a myriad of other differences (see Garrett, 2010). In an experimental study, however, participants can be placed in identical settings, asked to engage in identical tasks, accused of identical violations (i.e., crimes), and interrogated by the same individual using tactics that are as similar as possible across participants and conditions.

Another important feature of experimental control is the ability to manipulate only the variable or variables of interest. A typical

interrogation may include several strategies, potentially including several deceptive tactics. Interrogators may work as individuals or in groups over hours of interrogation and use FEPs, implicit promises or threats, a variety of themes, and other tactics that increase the difficulty of drawing general conclusions from these complex events. Unlike these characteristics of actual interrogations, an experimental interrogation typically includes one interrogator who consistently uses only the interrogation tactic or tactics under study.

The experimental setting also has other advantages. Unlike actual interrogations, in an experiment, the researchers can know the ground truth—whether the suspect is factually guilty or innocent. Even if the interrogator in a study does not know the guilt or innocence of the participant, the ground truth is known to an experimenter who can then evaluate the truth-value of any confession. In contrast, the ground truth is not available in studies of actual interrogations. If an actual suspect confesses in a police station, how can a researcher learn whether the confession is true or false? Comparing confessions to jury verdicts is not effective; too many cases discussed in this book reveal the ways that juries can err and convict innocent defendants based on confession evidence, including coerced or false confessions. Similarly, judgments of police detectives, attorneys, judges, appellate courts, journalists, and others are heavily impacted by confessions and cannot provide independent verification of a suspect's guilt or innocence. Defendants cannot provide confirmation either. Many defendants, including many factually innocent defendants, have been convicted despite their attempts to retract their confessions as false or coerced (see e.g., Garrett, 2010; Scheck et al., 2001).

In addition to these factors, some guilty suspects attempt to retract their true confessions with claims of what Wallace (2010) calls "*wrongful innocence*" (¶8, italics in original; see also Cassell, 1999). These efforts complicate the process of verification in two ways. First, they limit the ability to evaluate ground truth using only suspects' or defendants' statements. Second, they cause and justify important doubts about *any* suspect's attempts to recant a confession. These doubts shape investigatory biases and interfere with the attempts of innocent suspects to recant their false confessions. Additionally, observers struggle to separate true and false confessions by adults and juveniles (see Kassin,

Meissner, & Norwick, 2005, and Honts, Kassin, & Craig, 2013, respectively). In actual cases, unlike experimental studies, the ground truth remains elusive if not impossible to establish.

The experimental setting has numerous limits, however. These limits reflect the ethical limits of research with participants who are typically university student volunteers. After addressing limits related to the participants, the tasks, the consequences, and the interrogations themselves, we consider what scholars have learned despite these limitations.

Research studies typically evaluate the responses of university students, most often psychology, criminal justice, or other social science majors, who participate to fulfill class research requirements. Admission to universities typically reflects scholarly success in high school and/or on standardized examinations such as the SAT or ACT, and, although these tests do not directly assess academic ability or intelligence, they are correlated with academic outcome scores (Snowman, Leitner, Snyder, & Lockhart, 1980). Typical college students have therefore met or exceeded these requirements for admission, which differentiates them from many criminal suspects (Bureau of Justice Statistics, 2003). Another concern reflects the ages and genders of the participants. A majority of research participants, like the majority of psychology undergraduate students, are female (Stewart, Woody, & Pulos, 2018), unlike the majority of people who are incarcerated (Bureau of Justice Statistics, 2010) or the majority of drivers stopped and searched by police (Bureau of Justice Statistics, 2002 and 2011, respectively). Additionally, research participants are typically traditional college students, who are typically between 18 and 24 years of age, while a wide age range exists for people suspected of criminal behavior (see Leo, 1996b, for a review of demographic characteristics of 182 actual suspects interrogated within a police department). Similarly, college students are more likely to come from higher economic strata than typical suspects; Leo (1996b) found that only approximately 13% of suspects in his sample came from the middle or upper-middle class. College students are also more likely to be White; for example, 69% of the suspects in Leo's (1996b) sample were Black. The implications of the gender imbalance, the limited age range of participants in experimental studies, and the other differences between experimental and actual populations remain unknown.

Another limitation related to the participant population is the lack of experience as suspects in legal investigations. Many of the individuals who face police interrogation have done so before or have been engaged in criminal activity with people who have had these experiences (Leo, 1996b). People with criminal convictions, particularly felony convictions, are extremely rare among university students, even though a growing movement exists to facilitate entry to colleges and universities for people with felony and other convictions (Lantigua-Williams, 2016). Across these characteristics, experimental suspects who face simulated interrogations differ from actual suspects. These differences could have a range of potential impacts, and psychological researcher Joshua M. Stewart and colleagues (2018) note that research participants could be more or less vulnerable to false confession than are actual suspects. If research participants are university students, they are likely to be adults rather than juveniles, unlikely to be intoxicated during the study, and likely to meet typical university admissions standards (i.e., less likely to have a cognitive disability). These factors may make them less vulnerable to false confessions. In contrast, research participants are likely to have limited or no experience with the legal system, and some courts have argued that this makes individuals more vulnerable to false confession (see *Lynumn v. Illinois*, 1963). Additionally, in some methods described below, all participants are factually innocent, and, as reported by Kassin (2005, 2012), innocence can "put innocents at risk" (2005, p. 215).

The tasks participants complete in these studies also limit generalizability. As we discuss subsequently, confessing to an error or confessing to breaking the rules of a study to help a fellow participant in need (as in the social cheating methods described below) are violations of conventional rather than moral rules (see Turiel, 1983, 2002). Participants may consider whether to engage (or to report having engaged) in these rule violations in ways that are very different from how people consider engaging in criminal acts such as assault or homicide that are moral violations.

Research participants also face consequences of true or false confessions that reflect the ethical limitations of university research. Students are told that if they confess they may face consequences such as having to speak to a professor (see, e.g., Kassin & Kiechel, 1996; Russano, Meissner, Narchet, & Kassin, 2005). While professors can undoubtedly

be intimidating to students, even the angriest academic is likely to pale in intimidation compared to incarceration. Unlike actual interrogations, scholars cannot ask research participants to face potential incarceration, fines, or the death penalty, and scholars cannot ask participants to face a range of other consequences, including loss of jobs, loss of university standing, future employment consequences, publicization of crimes to family members, friends, and communities, and other consequences.

A major set of differences between experimental and actual interrogations reflects the interrogations themselves. To minimize stress to research participants, simulated interrogations typically range for minutes rather than hours. For an illustrative example, as part of a larger research program, Kassin and Fong (1999) asked students to commit one of several mock crimes and to face interrogation. The mock interrogations lasted until the participant refused to confess for the second time. To meet these criteria, the interrogations lasted from three and a half minutes to six minutes. This range of times, which reflects the importance of protecting research participants from undue stress, leads to unrealistic mock interrogations. Typical actual interrogations last 60–90 minutes (Kassin et al., 2010), and interrogations that have led to known false confessions last longer than 16 hours on average (Drizin & Leo, 2004). A more illustrative argument comes from our conversations with police investigators. When we have asked police interrogators how many six-minute interrogations they have completed, their most common response is simply to laugh.

Another concern raised by John E. Reid & Associates, Inc. (2018c) is that studies typically employ mock interrogators who are not trained or experienced in police interrogations. Some mock interrogators have been trained by John E. Reid & Associates, Inc.,[11] however, and trained, experienced interrogators may be more rather than less influential on suspects' decisions to confess, regardless of whether suspects are guilty or innocent. In other words, this criticism about realism suggests that some factors revealed in research are likely to be stronger rather than weaker in actual interrogations. We return to the effects of training on interrogators in later chapters.

Although these factors limit the conclusions that can be drawn from experimental research, scholars "can use simulations to model (and

manipulate) the social and cognitive processes that interrogators and suspects undergo and to assess the effects of such variables on the increased/decreased likelihood of confession" (Narchet, Meissner, & Russano, 2011, p. 463). As we examine the experimental literature in more detail, we explore various experimental methods, including relative strengths and weaknesses of various approaches. Three primary methods include the ALT-key method, the social cheating method, and the individual cheating method.

The ALT-Key Method

The first experimental study of interrogation and confession was the ALT-key study by Kassin and Katherine L. Kiechel (1996; see Kassin, 2016). Kassin and his student sought to develop an ethical procedure that would present innocent participants with a direct accusation and an option to confess to a violation of experimental procedures. In this study and the many that followed (e.g., Forrest, Wadkins, & Miller, et al., 2002; Horselenberg et al., 2006), participants are instructed to complete a computer task with a warning to avoid a forbidden key (e.g., the ALT key), because that key causes the computer to crash. Then, even though the participants do not press the ALT key (Kassin and Kiechel [1996] monitored keystrokes to ensure that all participants were factually innocent), the computer crashes. The experimenter then falsely accuses the participant of pressing the forbidden key and attempts to induce the participant to sign a confession to damaging the experiment. As noted by Kassin (2016), the pilot testing sessions were more intense than expected (i.e., the first participant cried), and the experimenters reduced the intensity of the experimenter's reaction to meet ethical expectations. The initial study manipulated typing speed and the use of a FEP. Other scholars have since extended this paradigm to investigate the personality of the suspect (Forrest, Wadkins, & Larson, 2006; Horselenburg, Merckelbach, & Josephs, 2003), the presence of stress (Forrest et al., 2002), the age of the suspect (Redlich & Goodman, 2003), and the severity of the consequences (Horselenberg et al., 2006), among other variables (see, e.g., Blair, 2007; Klaver, Lee, & Rose, 2008).

Several observers, however, have noted the limited realism of this method (e.g., Russano et al., 2005; Perillo & Kassin, 2011; John E.

Reid & Associates, Inc., 2018c). In addition to the factors discussed previously that limit realism, there are additional questions about this method. First, unlike crimes, which typically require both *actus reus* (i.e., the commission of an illegal act) and *mens rea* (i.e., the intention to commit an illegal act), the alleged transgression in the ALT-key study does not require intent (Houston, Meissner, & Evans, 2014). Additionally, because participants could believe that they accidentally pressed the ALT key, the alleged act may not be one that participants would remember; they may even believe that they would *not* recall pressing the ALT key if they had done so. These features are not analogous to most crimes. For example, it is nearly unimaginable that someone would forget or wonder whether they accidentally or otherwise unintentionally engaged in the complex act of stealing a vehicle.

There are legal analogues to the ALT-key task, however. One of the first variables studied with this paradigm was plausibility. Kassin and Kiechel (1996) manipulated the presentation speed of stimuli to which participants had to respond, assuming that participants would view errors as more likely in the fast presentation condition. Other scholars (e.g., Blair, 2007; Klaver et al., 2008) manipulated plausibility with the location of the forbidden key, assuming that placing the forbidden key next to a response key (e.g., as the ALT key is next to the space bar) would lead participants to believe that errors were more likely to occur when compared to conditions in which the forbidden key was far from the response key (e.g., as the ESC key is far from the space bar). Scholars intend both methods to affect participants' "subjective uncertainty concerning their own innocence" (Kassin & Kiechel, 1996, p. 126). The meta-analysis by Stewart et al. (2018) revealed that greater plausibility of error led to higher false confession rates. Although subjective uncertainty about one's innocence appears unrealistic in most crimes, these findings carry implications for negligence cases. As Stewart et al. (2018) note, "in a civil case or a criminal negligence case resulting from an automobile accident, a defendant may be more likely to admit to not using their turn signal (i.e., a more plausible act) than to swerving radically across lanes (i.e., a less plausible act)" (p. 23). Despite the limitations discussed previously, we echo calls from Stewart and colleagues (2018) for additional research with the ALT-key methods to model interrogation and confession in civil and criminal negligence cases. These and

other limitations of the ALT-key method led to the development of the social cheating method, also called the *Russano method* after Melissa B. Russano, the psychological researcher who was lead author of the first study to employ this approach (Russano et al., 2005).

Social Cheating

The social cheating method involves a series of tasks in which the participant must work alone or with a collaborator (see Russano et al., 2005). In one of the individual sections of the study, the collaborator, who is actually a confederate, asks the participant for help, which violates the prescribed rules of the study. Unlike the ALT-key study, in which all participants were factually innocent, this method allows the participants to choose whether or not to break the rules and therefore allows for comparison of participants who are guilty with those who are innocent. Additionally, unlike in the ALT-key method, guilty participants (i.e., those who break the rules and help the confederate) must make an intentional choice to do so, are likely to remember that they did so, and are likely to recall the forbidden collaboration. These differences in design drive differences in outcomes. Stewart et al. (2018) found that false confessions were less likely in the social cheating method (26%) than in the ALT-key method (55% of participants). These outcomes are not surprising, given the nature of the violation to which individuals confess (i.e., an accidental vs. intentional rule violation) and other differences.

Despite these advantages, ethical concerns exist regarding the Russano method (see Russano et al., 2005). All participants face direct accusations of a violation of ethical rules of the experiment, and some participants may react strongly to these accusations. Even with substantial ethical safeguards, these questions persist.

Individual Cheating

In individual cheating methods, participants work alone on a task, and then experimenters inform the participant that there is evidence that the participant cheated (Horselenberg et al., 2006; Nash & Wade, 2009). In both of these studies, the experimenters then used an FEP;

they presented the participants with fabricated evidence of cheating or informed participants that such evidence exists. As we described previously, in one individual cheating study, all participants were factually innocent, and *all* participants falsely confessed. Stewart et al. (2018) found that the mean confession rate across their sample of individual cheating studies (75%) did not differ from the false confession rate in their sample of ALT-key studies, yet both false confession rates were higher than the mean false confession rate in the social cheating studies.

Meta-Analysis

How should scholars, practitioners, attorneys, and courts interpret this variable collection of scholarly studies? Some scholars have conducted narrative reviews of the literature (e.g., Drizin & Leo, 2004; Kassin et al., 2010; Kassin & Gudjonsson, 2004; Leo, 2008; Woody et al., 2011). Narrative reviews have important strengths, particularly for revealing the richness of a research literature, but they have limits related to precision, particularly given the variability within the methods and findings. For example, some experimental studies have generated no false confessions (e.g., Hill, Memon, & McGeorge, 2008), while in other studies, all participants falsely confessed (e.g., Nash & Wade, 2009). One potential solution to ameliorate these difficulties is meta-analysis, which can provide a data-driven rather than a narrative summary of this research and, in the process, can reveal weaknesses in the literature.

Multiple relevant meta-analyses exist, and two have investigated adversarial and information-gathering approaches. Adversarial approaches are exemplified by the direct confrontation of the suspect with guilt in the first step of interrogation (i.e., not the first step in an interview or a Behavior Analysis Interview, but the first step in interrogation) as recommended by Inbau et al. (2013). The first meta-analysis (Houston et al., 2014) evaluated outcomes from six studies using the Russano method (i.e., the social cheating method), particularly participants' perceptions of factors that shaped their decisions to confess or refuse to confess. The second meta-analysis included ALT-key and Russano methods and evaluated confrontational and information-gathering approaches (Meissner et al., 2014). We return to these findings in the final chapter; both of these meta-analyses found that false confessions were more likely using

confrontational methods and that confrontational methods were less diagnostic.

In this context, the term *diagnostic* is used similarly to how medical providers use the term. Physicians and others seek diagnostic tests—those that validly and reliably separate people with a particular condition from those without that condition. Similarly, as Russano et al. (2005) stated, "the goal of the criminal justice system should be to implement procedures that are diagnostic, meaning those that increase the rate of true confessions while minimizing the rate of false confessions" (p. 481). Procedures with strong diagnosticity increase abilities of officers and others to separate true from false confessors.

In addition to these meta-analyses, Stewart and his colleagues (2018) used meta-analysis to investigate the effects of various forms of deception on experimental false confession rates. In the materials that follow, we examine several forms of police deception and the experimental studies that have employed these forms of deception.

Deceptive Tactics

Minimization

Minimization includes tactics that reduce the perceived legal severity of the crime, the perceived moral severity of the crime, or the perceived potential consequences of confessing to the crime. Minimization is widely used by police detectives (Cleary & Warner, 2016; Kassin et al., 2007), and it is therefore unsurprising that psychological researcher Sara C. Appleby and colleagues (2013) found that 65% of the false confessors in their sample included a minimization theme in their eventual false confessions.

Several studies have investigated the effects of minimization on false confession rates. Although this body of research did not reach a size to allow for meta-analysis of minimization as a moderator variable (see Stewart et al., 2018), scholars have demonstrated that minimization tactics increase false confession rates using the ALT-key method (Klaver et al., 2008) and the Russano method (Russano et al., 2005; Narchet et al., 2011). More specifically, Russano et al. (2005) noted that minimization increased both true confession rates and false confession rates, substantially reducing diagnosticity.

In addition to these findings, as noted by Kassin and Karlyn McNall (1991), minimization typically includes offers of leniency. Therefore, Russano et al. (2005) investigated the effects of a related interrogation tactic alongside minimization—the offer of a deal that implied leniency. The interrogator informed the participant that if the participant signed a confession to cheating, "things could probably be settled pretty quickly" (p. 483). This tactic increased both true and false confession rates, reducing diagnosticity. Although Russano et al. (2005) did not find an interaction between minimization and the implied offer of leniency, both strategies increased false confession rates, and participants who faced both tactics were substantially more likely to confess falsely than were participants in any other condition.

Maximization

Maximization includes maximizing or emphasizing the legal or moral severity of the crime or the potential consequences of the crime. Maximization can include an implied threat of more severe consequences if the suspect fails to confess (see Kassin & McNall, 1991). As with minimization, experimental research has demonstrated substantial increases in false confession rates as a function of maximization. For example, using the ALT-key method and a plausible accusation, Jessica R Klaver and colleagues (2008) demonstrated that maximization led 47% of their participants to confess falsely. Similarly, psychological scholar Fadia M. Narchet and colleagues (2011) found that when trained student interrogators used maximization, false confession rates increased. Notably, Narchet et al. (2011) also found that a combination of minimization and maximization led to the highest rates of false confession and the smallest differences between true and false confession rates—the least diagnosticity.

Role-Playing

Police have wide latitude to play roles during interrogation (Skolnick & Leo, 1992). As we noted in the opening to this chapter, police may represent views that are not their own. Among other tactics, they may be respectful, encouraging, or even sympathetic to suspects whom they believe to be guilty.

A more elaborate form of deceptive role-playing is sometimes called *good cop/bad cop* (Skolnick & Leo, 1992), in which two police officers assume minimizing and maximizing roles during the interrogation. Typically, the maximizing officer (the "bad cop") maximizes the legal and moral severity of the alleged crime by presenting to the suspect the overwhelming likelihood of negative consequences, potentially including implicit threats. The minimizing officer (the "good cop") expresses sympathy, minimizes the legal and moral severity of the alleged crime—potentially with implied promises of leniency—and offers support to the suspect against the implied threats of the maximizing officer. As one experienced interrogator informed seminar students, however, these tactics require extensive coordination and time, and therefore the most common use involves a single officer (Anonymous Police Interrogator, March, 2015; see also Skolnick & Leo, 1992). When a single officer plays these roles, they typically portray the good officer, show sympathy, and emphasize their helping role for the suspect. In one variation, the interrogator gains cooperation from the suspect and then leaves the interrogation room, supposedly to inform a supervisor that the interrogation has concluded and that the suspect is trustworthy. The officer then returns and informs the suspect that, despite the officer's belief in the suspect's claims, the supervisor is just not satisfied and wants more answers.[12] In this way, the officer continues to play the role of the suspect's ally while the potentially non-existent supervisor plays the "bad" role.

Beyond acting in ways that defy their actual beliefs and convictions, police may portray criminal gang members (Smith, Stinson, & Patry, 2009, 2010), fellow inmates in a prison (*Arizona v. Fulminante*, 1991), and others who may appear reassuring to or even aligned with suspects. Some role-playing activities can raise legal questions—for example, taking the role of clergy and informing a suspect that failure to confess will lead God to punish them (Skolnick & Leo, 1992). For another example, Camilo Leyra faced hours of continuous questioning by police about the murder of his parents (*Leyra v. Denno*, 1954), which led to emotional and physical exhaustion. During questioning, Leyra complained of sinus pain and requested medical treatment. The police introduced a medical practitioner who falsely identified himself as an outside physician brought in to treat Leyra rather than as his actual identity: a state psychiatrist who came into the interrogation room

to support the police. Leyra confessed (see also Meerloo, 1956, for the perspectives of the expert witness). The U.S. Supreme Court heard the case, viewed the totality of the circumstances in the interrogation as a violation of due process, and ordered a new trial without the confession (*Leyra v. Denno*, 1954).

Role-Playing: Mr. Big

An elaborate role-playing approach used in Canada is the Mr. Big Technique. This tactic is typically employed for serious crimes and "is designed to elicit inculpatory statements or confessions from recalcitrant suspects or in cases where little forensic evidence is available" (Smith et al., 2009, p. 169). In the Mr. Big technique, undercover officers pose as members of a criminal gang, befriend the suspect, and involve the suspect in minor criminal activity for which they reward the suspect "generously" (Smith et al., 2009, p. 170). Officers then offer an opportunity for the suspect to meet Mr. Big—a major figure in the gang—and to earn a promotion into more important criminal activities with bigger rewards. Officers who portray criminals then inform the suspect that this opportunity requires a confession to a serious crime (i.e., the crime for which the police seek a confession). This requirement is justified either to prevent the new member from later informing on the gang or to enable Mr. Big to use his connections to make the evidence for the crime disappear. These conversations can include implicit and explicit threats of exposure or rejection from Mr. Big if the suspect does not confess to details of the crime, implicit and explicit offers of protection from potential charges if the suspect does confess to Mr. Big, and other tactics (Keenan & Brockman, 2011; Smith, Stinson, & Patry, 2010).

As discussed previously, minimization and maximization can increase the likelihood of false confessions, and both are central to the Mr. Big technique (Smith et al., 2009, 2010). Additionally, because suspects believe that they are speaking to members of a criminal gang rather than to police officers, they are not in custody, are not informed of rights, and remain unaware of potential legal consequences of confession. Finally, suspects may be further motivated to seek additional rewards through the criminal gang, including substantial monetary and status-related rewards (Smith et al. 2009, 2010; Luther & Snook, 2016).

Psychologist Steven M. Smith and colleagues (2009) report that the Mr. Big technique has been used in Canada at least 350 times prior to 2004 and that it induces a 75% confession rate and a 95% conviction rate for suspects who confess under these circumstances. The tactics as well as the rates of confession and conviction generated enough controversy that the Mr. Big technique formed the basis for the first two episodes of *The Confession Tapes* (Loudenberg et al., 2017). Scholars are not alone in their concerns. A recent Supreme Court of Canada decision addressed confessions generated by the Mr. Big technique (*R. v. Hart*, 2014). The Court ruled that for a confession induced by the Mr. Big technique to be admitted at trial, prosecutors must demonstrate that the truth-value of the confession outweighs the potential prejudice it may induce in the jury. A central concern about prejudice is that jurors appear likely to form negative biases about the defendant based on the defendant's willingness to engage in additional criminal behavior above and beyond the allegations disputed at trial. Additionally, the Court raised concerns about the potential for the Mr. Big technique to coerce suspects into confession (Luther & Snook, 2016). Psychologists Kirk Luther and Brent Snook (2016) reviewed the Mr. Big technique in light of principles of persuasion, the perceived "immense social and financial benefits," and the perceived "minimal consequences for confessing" (p. 138), and they argued that Canadian police should discontinue using Mr. Big. As of this writing, police in the United States do not appear to use this controversial and elaborate role-playing tactic (Puddister & Riddell, 2012; Connors, Patry, & Smith, 2018).

FEPs and False Confessions: The Evidence

Although all of these forms of police deception raise important questions, false-evidence ploys (FEPs) merit particular attention. Powerful evidence exists to demonstrate that FEPs increase false confession rates. First, there is the archival evidence from false confession cases, most of which include FEPs (Kassin et al., 2010). Second, the evidence for the power of FEPs to increase false confession rates extends from the earliest experimental studies (Kassin & Kiechel, 1996) to research using the Russano method (Perillo & Kassin, 2011) and individual cheating methods (Nash & Wade, 2009). The evidence also addresses implicit as well as

explicit FEPs. Perillo and Kassin (2011) found that implicit FEPs increase false confession rates in ways similar to explicit FEPs. Despite the profound legal and constitutional differences between these approaches, suspects did not respond differently to these forms of deception. Third, meta-analytic findings reveal important concerns. Across the body of ALT-key studies in their sample, Stewart et al. (2018) found that FEPs increased false confession rates by 21%. Additionally, they examined a smaller subset of these studies that directly compared FEP to no-FEP conditions and found a 20% difference in false confession rates.

Despite these stark impacts, some continue to question the effects of FEPs. Inbau et al. (2013) invite readers to imagine an FEP and then draw conclusions from a thought experiment. They ask readers to "consider an innocent rape suspect who is falsely told that DNA evidence [implicates his guilt]. Would this false statement cause an innocent person to . . . confess? Of course not! . . ." (p. 351; see Forrest et al. 2012 for an experimental examination of the difficulties in imagining deceptive tactics during police interrogation). Notably, Inbau et al. (2013) refer to the possibility that FEPs could induce false confessions as "absurd" (p. 352). How do they challenge the consistent findings that emerge from this body of research (see Stewart et al., 2018)?

Inbau et al. (2013) continue to reject claims that FEPs cause false confessions, arguing instead that with FEPs, "[false confession] becomes much more plausible . . . —not because fictitious evidence was presented, but because that evidence was used to augment an improper interrogation technique" (Inbau et al., 2013, p. 352). There are several concerns with this claim. First, Inbau et al. (2013) focus on legal precedents, and the focus on legal precedents leads to separation of admissible and non-admissible techniques based on judicial decisions rather than scientific findings about increased false confession rates (Kassin, 2010). As we have discussed, these court decisions have their roots in the early and mid-twentieth century, before the emergence of the scientific literature. Second, Inbau et al. (2013) argue that the false confessions must have been caused by an unrecorded or unobserved illegal tactic—a tactic defined as illegal or coercive by courts, regardless of the scientific findings. This contention appears likely to fit some actual interrogations. For example, after hours of FEPs, implied threats, and other intense tactics, one of the sailors who falsely confessed in the Norfolk Four case

asked for an attorney (Bikel, 2010). Reportedly, the detective returned and continued the interrogation without providing the suspect with an attorney. After this alleged illegal tactic, the sailor falsely confessed. These documented cases with illegal behavior, however, do not address the multitude of other cases without documented illegal actions or the experimental literature. The claim that any false confession induced by an FEP must result from an unreported illegal tactic appears untenable in experimental contexts. As Stewart et al. (2018) argue, "under controlled experimental conditions it remains highly unlikely that researchers consistently included improper, illegal, or coercive yet unreported interrogation tactics in their methods" (p. 24). FEPs appear to increase false confession rates without any additional tactics, legal or otherwise.

The Totality of the Circumstances

Deception remains widespread in U.S. police departments, and deception brings powerful consequences for suspects who become defendants. In addition to trials and later appeals, deception exists in the larger context of the totality of the circumstances. As discussed previously, we view police interrogators as more like psychological counselors: flexible, adaptive practitioners who fit their formal training and professional experience to the nuances of each suspect and crime (see Wallace, 2010). Interrogators may incorporate several themes, minimization and maximization strategies, and FEPs into any single interrogation. The whole becomes radically other than the sum of its parts.

Any evaluation of deception in an actual interrogation must reflect the totality of the circumstances. What forms of deception did police use? How often and with how much intensity did they employ these tactics across the interrogation? How many officers brought which deceptive tactics how many times? Even these questions leave much of the totality of the circumstances untouched. Other questions arise. Did the suspect bring trait or state vulnerabilities into the interrogation room? Were officers aware of these vulnerabilities? Did officers consider these potential vulnerabilities carefully, ignore them, or attempt to exploit them? How convinced were officers of the suspect's guilt at the start of the interrogation? How did their confidence that they had the correct suspect and their drives to solve this particular crime in their

community affect their view of the suspect? How did these larger factors drive their choices of interrogation tactics, including deception?

In the next chapter, we consider types and causes of false confessions, and we connect these deceptive tactics to other factors. We then examine the ways that these factors continue to cause difficulties in detecting false or coerced confessions for police officers, other investigators, prosecution and defense attorneys, jurors and juries, and trial and appellate judges. In the final chapter we return to these issues to recommend changes to police interrogation in the United States, including the elimination of deceptive tactics.

4

False Confessions and Their Causes

Beatrice (bee-AT-riss), Nebraska, is a small city that is big on farmland and family values. With a population of a little over 12,000 in town (U.S. Census Bureau, 2018) and another ten thousand across the county, homegrown residents can clearly identify who belongs and who does not. In 1985, a long-time resident, 68-year-old Helen Wilson, was brutally raped and murdered in her own apartment. When her sister and brother-in-law found her body the next day, they called the Beatrice Police Department (Ferek, 2016). Officers arrived on the scene and began taking photos as well as video in order to preserve the horrific details of an otherwise tidy apartment. The photos and video as well as the condition of the apartment played important parts in this false confession story.

Although Beatrice was "crime free" by big city standards, an unknown assailant had assaulted and/or raped four women within a six-week period in 1983 (Ferek, 2016). The Beatrice Police Department and an FBI profiler, Pete Klismet, believed that the rape and murder of Helen Wilson might be part of this larger pattern. What the Beatrice police did not expect was that a former officer turned hog farmer, Burt Searcey, would usurp their investigation—although he started investigating as a concerned citizen, he was later hired by the Gage County Sheriff's Department. With the help of Sheriff Jerry DeWitt, police psychologist and part-time deputy Wayne Price, polygraph examiner Paul "Jake" Jacobsen, prosecutor Dick Smith, and a series of court-appointed defense attorneys, this four-year investigative process would result in five false confessions and six mistaken convictions (Ferek, 2016).

Searcey, a purported friend of the Wilson family, was not yet a member of the local sheriff's department when he started talking with a confidential informant. In addition to lacking credentials, he overlooked the existing animosity between the informant and Ada JoAnn Taylor. According to the informant, Taylor had confessed to killing Helen

Wilson and had also confessed that Joseph White had helped. Searcey interviewed Wilson's family members and considered Taylor a major suspect. In addition to severe drug and alcohol use, Taylor had been diagnosed with borderline personality disorder and had repeatedly been an inpatient at several psychological treatment facilities (Ferek, 2016). Having interacted with Taylor multiple times, the Beatrice Police department considered her unreliable. Searcey, who in the meantime had been hired by the Gage County Sheriff's Office, interrogated Taylor until she admitted being in Helen Wilson's apartment the night of the crime. Before long, Taylor began identifying other perpetrators. Based on statements from confidential informants as well as Taylor's confession, police arrested Taylor, Deb Shelden, Kathy Gonzalez, James Dean, Thomas Winslow, and Joseph White for the rape and murder of Helen Wilson. Taylor, Shelden, Gonzalez, and Dean accepted plea deals in return for testifying against White in court. Unfortunately, the information offered in return for the plea agreements was false. Based on this information, a jury convicted White of first-degree murder in 1989 (Innocence Project, 2018c). After White's conviction, Winslow pleaded no contest to aiding and abetting second-degree murder and received a 50-year sentence. Gonzalez, Dean, and Shelden served approximately five years each. White, Winslow, and Taylor each served 19 years.

In 2008, the state of Nebraska freed Taylor, White, and Winslow after DNA analyses showed that none of them was responsible for the rape and murder of Helen Wilson. White's conviction was overturned in 2008, and Taylor, Winslow, Shelden, Gonzalez, and Dean were pardoned in 2009. As with many of the cases described in this book, the errors associated with this case were complex and affected the victim's family, the exonerees, and the community. Some members of the county continue to believe Beatrice Six are guilty because of their confessions, despite White's overturned conviction, the pardons for other defendants, and the lack of physical evidence to connect any of them to the crime. In addition to dividing residents, the case has put the community on the verge of bankruptcy. In July 2016, a federal jury awarded the Beatrice Six $28.1 million and additional funds to cover legal fees. In response, the county appealed to a 3-judge panel of the Eighth U.S. Circuit Court of Appeals. The Eighth Circuit affirmed the verdict in June 2018 (Pilger, 2018). Subsequently, Gage County appealed to the Eighth Circuit to hear the case

en banc, and the court refused. The county directly petitioned the U.S. Supreme Court, which is unlikely to take up the case. Now Gage County is facing bankruptcy due to approximately $30 million in settlements, legal fees for the county, and legal fees for the Beatrice Six (Dunker, 2018). In an area where 70% of the tax revenue comes from agriculture, landowners—largely farmers—are bracing for increased taxes.

In this case, we can point to several issues. First, why did the Beatrice police not remain involved in this case? In a way they did. They followed a lead that Bruce Allen Smith, a young drifter, was involved. They even worked with the sheriff's office in 1985 to go to Oklahoma, interrogate Smith, and obtain a DNA sample. A forensic analyst evaluated Smith's DNA and indicated that it did not match the sample from the crime scene. It was not until 2001 that anyone learned that this analyst had performed many serology tests incorrectly, opening up several of her cases to litigation (Ferek, 2016). In 2007, Winslow and White were given access to the DNA evidence from the scene. It was retested, and individuals close to the case confirmed that Smith had indeed been the one who raped and murdered Helen Wilson (Ferek, 2016).

Although the Beatrice Police Department had withdrawn from the investigation of Taylor and her friends, the evidence they collected shaped the ongoing investigation run by Gage County Sheriff Jerry DeWitt. In particular, a video of the crime scene made its way to the sheriff's office and, as in many other cases, provided details that only the perpetrator—or anyone who watched the video—would know. This video and multiple photographs of the crime scene were shown to all of the suspects. As Joseph White awaited trial, the other suspects accepted plea deals from the Gage County prosecutor's office. When their stories did not match the version of the events accepted by Searcey, he would redirect the suspects and show them the video and photos of the crime scene. These tactics had important consequences at trial. Later, jurors saw the crime scene video and listened to the confessions, which included an impressive array of accurate details. The fit of the confessions to the video appeared to be powerful evidence, particularly when jurors heard similar testimony from Taylor, Gonzalez, Dean, and Shelden. It seemed an easy step to convict White.

Wayne Price's reported interactions with the suspects also raised problems (Huddle, 2009). Price worked nearby as a psychologist and

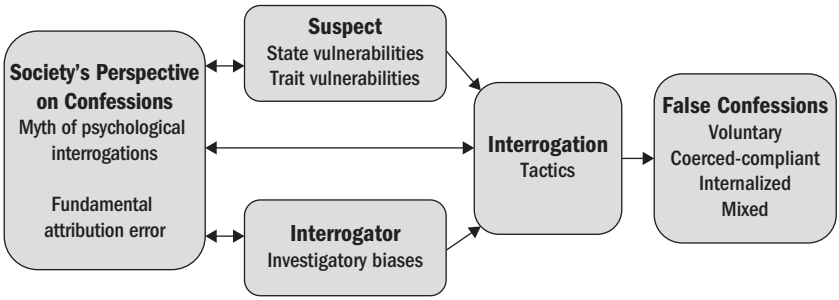

Figure 4.1. The Influence of Society, Suspect, and Interrogator Factors and Interrogation Tactics on False Confessions

served as a part-time deputy. He had met with both Shelden and Taylor in his role as psychologist, and when he entered the interrogation room he led them to believe that he was there to help them instead of interrogate them. In addition to the impropriety associated with a dual relationship and his previous contact with both women,[1] he suggested to Tom Winslow that Winslow was repressing memories of the murder. Price also suggested that Winslow might remember what happened to Wilson in his dreams, echoing the unreliable evidence from the Boorn brothers case in the early 1800s. Finally, Jake Jacobsen used the polygraph as an orchestrated scientific FEP, lying to those he polygraphed by saying that they failed, a particularly powerful tactic due to the suspects' beliefs in the veracity of the polygraph and the honesty of police.

In this chapter, we examine false confessions, including their forms and causes. We open with the myth of false confession (Leo, 2008) and the obstacles to recognizing and understanding false confessions. We then review a typology of false confessions, originally proposed by psychological researchers Saul M. Kassin and Lawrence S. Wrightsman (1981). We also examine alternative typologies. These typologies reflect the growing body of false confession cases, which reflect the capabilities to identify confessions as conclusively false. These abilities have improved, particularly with the advent of DNA evidence. But, the ability to determine the truth-value of a confession is greater for some crimes than others, particularly homicide and sexual assault—cases in which physical evidence may exist in the first place, be collected, and be stored securely and indefinitely in ways that allow for later evaluation.[2]

After developing these categories, we turn to the causes of false confessions. As we have throughout the book, we start with individual factors that increase the likelihood of false confession, and then we examine ways that these factors interact in actual cases. We then examine the larger context of society's perspective on confessions as well as the role of the fundamental attribution error in constructing these perspectives. We will then consider the complex interactions among suspect, interrogator, and interrogation within the totality of the circumstances. In our next chapter, we examine the costs and consequences of false confessions.

The Myth of Psychological Interrogation

False confessions remain some of the most mysterious events in the legal system. Observers frequently wonder why anyone would falsely confess, particularly to serious crimes and when the consequences are so negative. As scholars have long recognized, the choice to confess to a crime that one did not commit appears so irrational (Ofshe & Leo, 1997; Ofshe, 1989; Meerloo, 1956) as to be nearly unimaginable. Leo (2008) calls this common but erroneous view the *myth of psychological interrogation*, the belief that no one would falsely confess in the absence of physical coercion (i.e., torture) or severe mental illness. This belief pervades the criminal justice system as well as the public. For example, when a deputy district attorney in Colorado reviewed causes of false confessions, he listed only one: a suspect who is facing a severe mental illness may falsely confess (Evig, 2013). As we will see when we review studies of jurors, the jury-eligible public shares these beliefs as well, although a recent study suggests these commonly held beliefs may be changing (Mindthoff et al., 2018). As the litany of cases we review in this book demonstrates, false confessions occur in many ways due to a multifaceted collection of causes.

Typology of False Confession

Suspects confess for a wide range of reasons. Some do so voluntarily, whereas others confess falsely in response to coercion, many with the goal of escaping the interrogation. Still others confess falsely and believe

their confessions. To clarify these disparate phenomena, Kassin and Wrightsman (1981) introduced the framework we apply to understanding false confessions, which remains widely used (e.g., Woody et al., 2011; Kassin, 2005, 2012). They identified three general categories of false confession.

Voluntary False Confessions

A voluntary false confession occurs when a person confesses to a crime outside of an interrogation, potentially in a search for notoriety, due to substantial mental illness, or due to guilt feelings about a different crime or other noncriminal events. In many voluntary false confessions, the suspect knows that their claims are false. For example, in the early 1930s, more than 200 innocent people confessed to what was called "The Crime of the Century," the kidnapping of Charles Lindbergh's 20-month-old son (Kassin et al., 2010). Unlike the more than 200 innocent false confessors, the person eventually charged, convicted, and executed for the crime never confessed, and many remain convinced of his innocence. More recently, John Mark Karr falsely confessed to the murder of JonBenet Ramsey (Kassin et al., 2010; Murr, 2006), leading to his arrest in Thailand and extradition to the United States, where investigators found that his confession did not match crime scene evidence and that he did not match DNA evidence (Murr, 2006). Although many view Karr as seeking notoriety, others wonder if he was facing legal issues in Thailand or struggling with substantial mental illness; Karr's beliefs about his own guilt remain unknown (Murr, 2006).

The myth of psychological interrogation offers a framework for our views of voluntary confessions. Many observers assume that a voluntary confession, which occurs without deception, promises of leniency, or other potentially coercive tactics, must therefore be true. As we discuss later, the legal trustworthiness standard for corroborating confessions allows consideration of "the facts under which the confession is made" (as stated by the Colorado Supreme Court in *People v. LaRosa*, 2013, p. 578), including the absence of interrogation pressure. Voluntary confessions may appear particularly likely to be true, and some within the criminal justice system endorse this belief. For example, former Deputy District Attorney Samuel A. Evig (2013) argues

that a voluntary confession to a family member in advance of making the confession to law enforcement should increase investigators' confidence that the confession is true.

Not all observers agree, however. Some individuals in the criminal justice system have asked difficult questions about voluntary false confessions. Later, we will examine responses to some voluntary confessions, including the confessions of Austin Sigg and Juan Manuel Velasquez-Trinidad, both of which raised immediate doubts for district attorneys and police despite eventual corroboration (see Steffen, 2013, and Phillips, 2014, respectively). We hope that this general skepticism about confession evidence, particularly the search for independent corroboration, continues to proliferate through law enforcement. Determining the veracity of confessions remains at least as difficult for the next two categories of false confession.

Coerced-Compliant False Confessions

When a suspect follows police directions to confess to a crime that the suspect knows they did not commit, the suspect has provided a coerced-compliant false confession (Kassin et al., 2010; Kassin & Wrightsman, 1981). Some coerced-compliant false confessions reflect physical coercion (i.e., torture) or explicit threats by police. As we described in the Introduction, the heinous abuse and direct death threats applied to the suspects in *Brown et al. v. Mississippi* (1936) led the U.S. Supreme Court to reject their confessions and to establish precedents that drove torture out of most police interrogation rooms. Sadly, although physical torture had largely faded from police stations by the late 1960s (Chafee, et al., 1969; Leo, 1992), these actions are not completely gone; for example, some suspects in Chicago have challenged their confessions in court by claiming that they were physically beaten into confession by police (Ackerman, 2015).

Beyond physical beatings, explicit threats and other coercive tactics may encourage coerced-compliant false confessions. In his review of the disputed 1906 confession that we discussed previously, Münsterberg suggested that a complex process in which the suspect was hypnotized led to the suspect's false confession; today's readers may perceive the explicit threat of death as a cause. One of the false confessors in the

Norfolk Four case reportedly asked for an attorney, and the investigators allegedly continued to question him, which would be a major violation of his constitutional rights (Bikel, 2010).

Coerced-compliant confessions may be harder to recognize when the coercion is psychological, particularly because observers generally underestimate the psychological pressure of a police interrogation (Leo & Liu, 2009). The teens who falsely confessed in the Central Park Jogger case did so in ways that were inconsistent with both the physical evidence and each other's confessions (Garrett, 2010; Burns et al., 2013). Yet the trial court convicted them, and they remained incarcerated for years. The psychological coercion used by officers included long interrogations, false-evidence ploys (FEPs), and the detectives' clear implications of leniency (i.e., claims that if the suspects confessed they could go home). Despite these factors, concerns did not inspire legal action about their convictions until years afterward, when the DNA evidence in the case matched Matias Reyes, the actual perpetrator (Harris, 2017).

Coerced-Internalized False Confessions

The final category proposed by Kassin and Wrightsman (1981) is the rarest, the hardest to identify, and, for many, the most difficult type of false confession to accept. A coerced-internalized confession occurs when an innocent individual falsely confesses to a crime as the result of coercive techniques and then erroneously comes to believe their false confession. Debbie Shelden is an example of an individual who came to believe her own confession to the murder of Helen Wilson and continued to believe she was partially responsible even after DNA evidence identified the true perpetrator (Ferek, 2016). Coerced-internalized false confessors may seek plea deals, believe in their guilt, and refuse subsequent opportunities to appeal if convicted. Similarly, they may consistently take responsibility for their crimes before trial, in plea negotiations, at trial, on appeal, and while incarcerated, particularly because parole boards often look more favorably on inmates who engage in these behaviors. These and similar actions increase the difficulties inherent in identifying coerced-internalized false confessors. Additionally, psychological scholar Allison D. Redlich (2010) found that defendants who falsely confessed were approximately four times as likely to plead guilty than

were defendants who had confessed; therefore, some individuals who provided internalized false guilty pleas appear likely to exist in Redlich's (2010) sample.

Some coerced-internalized false confessions have shaped the history of the United States. In 1953, prisoner of war Colonel Frank H. Schwable became the highest-ranking officer to confess falsely that the United States had used biological weapons in the Korean War (Lech, 2011), and he claimed to have done so in the absence of physical torture.[3] Schwable, however, was only one of many military personnel who falsely confessed to war crimes when facing coercive communist interrogation in what were called brainwashing camps (*Columbia Law Review*, 1956). Although some service members were convicted in civilian courts for these behaviors (see e.g., *United States v. Batchelor*, 1956; *United States v. Dickenson*, 1955; United States Senate, 1956), the Marines held a court of inquiry to consider whether to recommend Schwable for court-martial (Lech, 2011). Schwable's confession is highly detailed, despite being false, and he reported that while he wrote it he believed it was true (Lech, 2011). Not until Schwable walked into U.S. custody did he doubt his confession, which he then immediately rejected as false.

The false confession and the subsequent court of inquiry expanded into an international crisis. The Marines declined to charge Schwable, based in part of the testimony of psychologists who argued the false confession was highly likely or even inevitable given the psychological pressures faced by Schwable (Lech, 2011; Meerloo, 1956). One expert witness brought credentials that included both academic research into interrogation and confession as well as horrific experiences facing coercive interrogation by Nazis as part of the Dutch resistance during World War II (Lech, 2011). After helping an unknown number of people prepare for, endure, and recover from torture by the Gestapo and after enduring his own physically coercive interrogations, the expert argued strongly that "anyone in this room" would falsely confess under these circumstances, a claim that was particularly powerful due to the number of high-ranking Marine officers present (Meerloo, 1956, p. 34). Even the sitting president responded to this claim with concern and compassion for Schwable and other returning service members who may have falsely confessed (Eisenhower, 1954). These events powerfully shaped mid-twentieth-century world history.

Police-induced coerced-internalized confessions have also generated notoriety. The events surrounding Paul Ingram's confession provide what prominent psychological researcher Elizabeth F. Loftus (1993) called "one of the most dramatic cases of false memory of abuse ever to be documented" (p. 532). In 1988, Ingram, a law enforcement officer and head of his county political party in Olympia, Washington, faced charges of ritual child sexual abuse. Similar charges had increased in frequency with the perceptions that ritual child sexual abuse was sweeping the nation (Casey, 2015; Loftus, 1993). Ingram initially denied the allegations, but investigators rejected his denials. After five months of interrogation, with pressures from investigators and suggestions from a psychologist, Ingram confessed to a litany of heinous crimes, including sexual assaults of adults and children and participation in a group that perpetrated ritual Satanic abuse, including the homicides of 25 infants (Loftus, 1993; Ofshe, 1992). The ongoing interrogations continued to lead to more recovered memories of additional crimes. The prosecution had hired sociologist Richard Ofshe, an interrogation scholar, to interview Ingram and his family, and Ofshe sought to test Ingram. Ofshe fabricated a scenario that all investigators agreed had not happened.[4] When he used the same procedures that interrogators had used (e.g., highly confident suggestion of the crime, encouragement to remember details and to pray about the memories), Ingram recovered memories of these fabricated events and wrote a detailed, three-page false confession (Loftus, 1993; Ofshe, 1992). Ofshe submitted his report to the sheriff's office, but the district attorney did not immediately present it to the defense team (Brailey, n.d.). After Ofshe argued in front of the trial court, the judge ordered the release of the report to the defense, and it arrived just after Ingram had pleaded guilty (Brailey, n.d.). While incarcerated, Ingram failed in his attempts to change his plea. He has since been released from prison but remains designated as a sex offender (Robinson, 2013).

Other individuals have recovered memories of crimes they did not commit. For example, Joseph Dick, of the Norfolk Four, fabricated memories of perpetrating the crime for which he was convicted, memories that continue to haunt him (Bikel, 2010). In another example, despite initial denials, after a stressful night of interrogation that included

a false claim that he had failed a polygraph test, police continued to push Billy Wayne Cope to confess. Cope started to wonder if someone could commit a crime without knowing it and then confessed in great detail to assaulting, strangling, and murdering his daughter (Kassin, 2007). He later confessed a second time and even demonstrated the crime for police, who video-recorded his "vivid and gruesome" re-enactment (Kassin, 2007, p. 169). After his confessions, the results of DNA analysis connected biological evidence from the perpetrator to a new arrival to the family's neighborhood, a serial offender named James Sanders. The prosecution then modified their theory, arguing not that Billy Wayne Cope completed the acts to which he confessed but that he conspired to provide sexual access to his daughter to Sanders, despite the absence of any evidence for a prior link between the two men (Kassin, 2007). Even though there was no evidence of Cope's involvement other than his confession, the jury convicted him after a few hours of deliberation. The prosecutors (Sixteenth Circuit Solicitors, 2017) continue to reject claims that Cope confessed falsely, claims made by Kassin (2007) and by a news organization that investigated Cope's case (Dateline, 2010). Despite the prosecution's continued assertions of Cope's guilt, Cope's defense attorneys call the conviction "the worst miscarriage of justice" in which they have been involved (Daniel, 2017, ¶5).

We use this typology of false confessions throughout the book, but alternatives exist. For example, psychologist Mark Costanzo and legal scholar Richard A. Leo (2007) suggested a two-by-two framework in which false confessions are classified as coerced or voluntary and as instrumental or authentic. Two of these categories align with the Kassin and Wrightsman (1981) typology. For example, Constanzo's and Leo's coerced-instrumental category is similar to coerced-compliant false confessions discussed here; both describe an individual who knows they are innocent but confesses falsely to escape the interrogation. A difference in these conceptions relates to the depiction of voluntary false confessors. While Kassin and Wrightsman's (1981) system provides only one category of voluntary false confessor, Constanzo and Leo (2007) separate voluntary false confessors into categories of instrumental (e.g., someone who falsely confesses to seek fame, as in the kidnapping of the Lindbergh baby) and authentic (e.g., someone who confesses falsely due to a severe mental illness and believes their confession, such as Paul

Ingram). Across these and other typologies, the categories can serve as a guide for understanding and to seek strategies to reduce the likelihood of false confessions across contexts.

Causes of False Confessions

We now turn to the causes of false confession. We first review three general categories of causes: vulnerable suspects, investigatory biases, and specific interrogation tactics. Next, we examine some of the ways that these causes can interact. Then, as we have emphasized throughout the book, we examine the totality of the circumstances, including the complex ways that multiple factors interact in actual cases.

Vulnerable Suspects

Some suspects are especially vulnerable to police interrogation tactics and are therefore at greater risk of false confession. The notion that particularly vulnerable suspects may falsely confess has more appeal to common sense than do the other causes of false confession. This is due in part to the fundamental attribution error: the human tendency to overestimate internal or dispositional causes of another's behavior and to underestimate external or situational causes of behavior (Appleby et al., 2013; Costanzo & Leo, 2007; Kassin, 2008). In other words, observers, particularly those in Western cultures that emphasize individual autonomy (Markus & Kitayama, 1991), discount the influence that external factors may have in shaping the behavior of others (Appleby et al., 2013; Costanzo & Leo, 2007; Fiske & Taylor, 2008; Kassin, 2008), even while recognizing the influences of the environment on their own behaviors. This attribution error makes it difficult for observers to recognize the external factors that may lead to false confessions (i.e., investigatory biases and deceptive interrogation tactics as discussed below) but may help observers focus, appropriately in some cases and inappropriately in others, on the suspect's vulnerabilities.

A wide range of factors can increase suspects' vulnerabilities. We separate these into two general categories: *trait vulnerability* and *state vulnerability*. *Trait vulnerability* refers to long-term characteristics that increase vulnerability, such as being a person with a cognitive or

developmental disability, a person with a substantial mental illness, or an individual who is highly suggestible. We also use the term *trait vulnerability* to describe the ways that juveniles differ from adults. In this work, we use *trait* to describe not personality traits but long-term characteristics, including age, that influence vulnerability in general as well as vulnerability to deception or other coercive tactics in particular. *State vulnerability* refers to temporary factors that increase a suspect's susceptibility to false confession. Factors that induce a vulnerable state are temporary and may apply to any suspect; some that we will discuss below include fatigue, intoxication, and withdrawal.

Trait Vulnerability

Some suspects possess fairly consistent traits that increase their susceptibility to false confessions. For example, it is well known that juveniles are more prone to false confession than adults. These adult-juvenile differences have emerged under controlled experimental conditions (see Redlich & Goodman, 2003) as well as in large-scale studies of false confession histories of youth and young adults who are incarcerated for other crimes (Kassin & Gudjonsson, 2004; Gudjonsson, Sigurdsson, Asgeirsdottir, & Sigfusdottir, 2006; Viljoen, Klaver, & Roesch, 2005; Gross, Jacoby, Matheson, Montgomery, & Patel, 2005).

Developmental differences set juveniles apart from adults in many ways, reflecting both psychological science (Scott & Steinberg, 2008) and legal conventions, including the distinct juvenile justice system, which emerged in the late 1800s to emphasize rehabilitation instead of punishment of children (Vazquez, 2000). In recent decades, the recognition of important differences between juveniles and adults has grown substantially, and these differences provide the foundation for children's greater vulnerability to false or coerced confessions. We briefly examine relevant developmental differences between juveniles and adults.

Differences between juveniles and adults factor into decisions about criminal behavior as well as behavior during interrogation. First, across cultures, children and young adults are more prone to risky behavior, sometimes including criminal behavior (Steinberg, 2008; Steinberg et al., 2018; Sweeten, Piquero, & Steinberg, 2013). Second, this juvenile and young-adult risk-taking behavior reflects neurological

structure and function in adolescence. As people move to adulthood, developmental changes increase self-regulation (Steinberg, 2008) and decrease sensation-seeking (Harden & Tucker-Drob, 2011). During mid-adolescence in particular, sensation-seeking is high but self-regulation is still developing, leading to greater likelihood of risky behavior and impulsive actions, including both commission of crimes and false confessions during interrogation. Third, juveniles are less likely than adults to think about future consequences (Steinberg et al., 2009) and more likely to focus on rewards, including social recognition from peers and others (Chein, Albert, O'Brien, Uckert, & Steinberg, 2011). Fourth, juveniles remain more vulnerable than adults to persuasion (Steinberg & Monahan, 2007), a difference with important consequences for interrogation. Additionally, the neuroscientific research to support and clarify these claims is growing rapidly (Steinberg, 2017).

These and other developmental differences have driven recent legal decisions that differentiate children from adults (Steinberg, 2017). For example, when the U.S. Supreme Court ended the use of the death penalty with juveniles (*Roper v. Simmons*, 2005), it relied extensively on developmental science, particularly developmental neuroscience, to justify its decisions (Steinberg, 2017). Similarly, in the cases that banned sentences of life without parole for juveniles (i.e., *Graham v. Florida*, 2010; *Miller v. Alabama*, 2012), the U.S. Supreme Court cited the developmental science—including an *amicus curiae* or "friend of the court" brief from the American Psychological Association—to support its decision. The Court also observed that the scientific foundations had grown stronger in the years between *Roper v. Simmons* (2005) and the later decisions (Steinberg, 2017).

These developmental differences between children and adults contribute to juveniles' greater vulnerability to police interrogation techniques, powerful forms of persuasion. In the National Registry of Exonerations (2017), 38% of the false confessors were juveniles. Concerns about the vulnerability of children in police interrogation rooms, particularly when facing charges for serious crimes, have driven much scholarship in these areas (e.g., Feld, 2014; Redlich, 2007). For example, it is unsurprising that children struggle extensively with misconceptions about *Miranda* (Rogers, Steadham, Fiduccia, Drogin, & Robinson, 2014) and do so more than adults (Winningham, Rogers, & Drogin, 2018) and

that juveniles who focus more on short-term concerns, as juveniles are more likely than adults to do, are substantially more likely than others to waive their rights (Sharf, Rogers, & Williams, 2017).

Unfortunately, one of the most recommended strategies for protecting youth during interrogation, having a parent present, does not provide protection for children. As noted by law professor Tamar Birckhead (2012), parents may offer incorrect legal advice, may believe police claims that their child is guilty, or may encourage their child to confess for moral reasons without understanding the legal consequences of confession. Parents may also share police biases about their child's guilt and may even be the victims of the crime in question (Feld, 2006). For these and related reasons, the American Academy of Child and Adolescent Psychiatry (2013) issued a policy statement to recommend that juveniles have an attorney present during questioning, even if they have parents present before and/or during the interrogation.

Beyond age, other factors associated with individual differences affect a suspect's likelihood to confess falsely. For example, adults with cognitive disabilities remain particularly prone to false confession. Kassin et al. (2010) reported that 35% of the defendants in a sample of proven false confessions were juveniles or had cognitive disabilities; similarly, 70% of the false confessors in the National Registry of Exonerations (2017) had a cognitive disability or mental illness. In a study of exonerated individuals, legal scholar Samuel R. Gross and colleagues (2005) reported that false confessions were involved in the mistaken convictions of 42% of juvenile exonerees and 69% of adult exonerees with cognitive disabilities and/or mental illnesses.

Similar to people with cognitive limitations, people with substantial mental illnesses also face increased risks associated with false confessions. There are particular concerns about suspects who face *psychosis*, which typically includes distortions in thinking as well as in perception and social interactions (Weiss, 2003). Vulnerability takes many forms; for example, *none* of the individuals with severe mental illness in a particular sample could reason about *Miranda* warnings (Winningham, Rogers, Drogin, & Velsor, 2018). Beyond people with these substantial disorders, there exist concerns about suspects who are depressed (Weiss, 2003), in part due to concerns that the pervasive hopelessness and lack of energy that often characterize people facing these disorders (American

Psychiatric Association, 2013) may lead to acquiescence with interrogators and to false confessions. There also exist concerns that people facing anxiety may exhibit behaviors that appear to align with observers' expectations for behavioral signs of deception. According to the DSM-5 (American Psychiatric Association, 2013), an individual diagnosed with generalized anxiety disorder has three or more of the following (or, for a child, as few as one): "restlessness or feeling keyed up or on edge," "being easily fatigued," "difficulty concentrating or mind going blank," "irritability," "muscle tension," and "sleep disturbance (difficulty falling or staying asleep, or restless, unsatisfying sleep)." Although these behaviors are not reliable indicators of lying, police interrogators, particularly those strongly convinced of the suspect's guilt, may misinterpret these behaviors as evidence of guilt rather than as behavioral symptoms of a suspect's psychological disorder.

Individuals with autism spectrum disorder (ASD) have deficits in socioemotional reciprocity and non-verbal communicative behaviors (American Psychiatric Association, 2013). They may be unable to maintain typical conversations, be more likely to avoid eye contact with others, and have difficulties expressing emotions and interpreting others' facial expressions. Research remains inconclusive on the possible influence of ASD on an individual's response to interrogation. Clinical psychologists Alice North, Alisa Russell, and Gisli Gudjonsson (2008) found that participants diagnosed with ASD appeared more compliant on the Gudjonsson Compliance scale compared to participants without a related diagnosis. There were no observed differences in suggestibility. Others have failed to find a relationship between people with ASD and compliance or suggestibility (Maras & Bowler, 2012). Despite these conflicting findings, other researchers have suggested that further work examining the effects of ASD on *Miranda* comprehension and interrogation related behavior is warranted (Salseda, Dixon, Fass, Miora, & Leark, 2011). As they note, "It is this coupling of poor comprehension with the social deficits found in ASD that places these individuals at particular risk for exploitation" (Salseda et al., 2011, p. 83).

The behaviors of vulnerable suspects are often misinterpreted. If interrogators are relying on evaluation of the suspect's behaviors to determine whether a suspect is lying or whether to shift from an interview to an interrogation and if these behaviors reflect a suspect's mental health

diagnosis or intellectual disability, the interrogator may commit to a lengthy and possibly coercive interrogation. Police interrogators, particularly those strongly convinced of the suspect's guilt, may misinterpret these behaviors as evidence of guilt and perceive individuals with mental diagnoses as behaving in "guilty" ways. These factors provide further support for using interrogation strategies that do not rely on the behavioral deception detection as an assessment of the suspect's truthfulness.

The consequences of these vulnerabilities are stark. Compared to the general population, individuals diagnosed with psychological disorders report false confessions and false guilty pleas at significantly higher rates (Gudjonsson et al., 2006; Redlich, Kulish, & Steadman, 2011; Redlich et al., 2010). Additionally, other factors may apply to people with mental illnesses. People with more severe mental illnesses are more likely to report having confessed falsely (Redlich et al., 2010). Redlich and colleagues (2011) found that, among defendants with substantial psychological disorders, false confessors were *more likely* to face prison than were true confessors. In these populations, interrogations that led to false confessions were perceived to be more intense than interrogations that led to true confessions. Additionally, as we have noted throughout the book, factors interact, such as when juveniles with mental illnesses face further increased risks of false confession (Redlich, 2007).

Other trait factors exist beyond age and mental illness. For example, Gudjonsson and colleagues (2010) evaluated male prisoners and found that hyperactivity and inattention were associated with self-reported false confessions to police. Similar results emerged from a separate study that also found "negative life events" as a predictor of self-reported false confessions (Gudjonsson et al., 2012). Antisocial personality traits and impulsivity are also associated with decisions to confess falsely (Gudjonsson et al., 2010). Similarly, being medicated for attention deficit/hyperactivity disorder and having experienced a negative life event—such as being the victim of bullying—predict the likelihood of making a false confession better than the presence of conduct disorder (Gudjonsson et al., 2012). Other scholars using experimental methods have found that scoring higher on authoritarianism measures (which include submission to legitimate authorities such as police) and lower on internal locus of control also predicted higher likelihood of falsely confessing

in lab settings (Forrest et al., 2006). These findings suggest that understanding which suspects are particularly vulnerable to interrogation remains complex.

Another psychological trait, suggestibility, has received extensive research attention. Suspects who are more suggestible are more likely to confess falsely (Drake, 2010; Gudjonsson, 1992, 2003, 2013). The degree to which suspects are suggestible is "dependent upon the coping strategies that people can generate and implement when faced with two important aspects of the interrogative situation—uncertainty and expectations" (Gudjonsson, 2013, p. 48). In layperson's terms, what is the likelihood that a suspect will incorporate information provided by police during the interrogation into their own narrative, and how likely is this narrative to change when interrogators reject the suspect's original account? The Gudjonsson Suggestibility Scales (i.e., GSS 1 and GSS 2) have been extensively evaluated as a tool for evaluating suspects in cases involving disputed confessions (Fulero, 2010a; Gudjonsson, 1992, 1997). Briefly, these scales measure a person's susceptibility to leading questions and their willingness to change answers after receiving negative feedback. Both versions of the scale assess two primary factors: yield ("the tendency of the individual to yield to (mis)leading questions") and shift ("the extent to which the interrogator can alter [or shift] the [suspect's] previous answers by interrogative pressure"), both of which show strong internal consistency (Gudjonsson, 1992). The Gudjonsson Suggestibility Scale, regardless of version, correlates with some of the factors discussed previously, including anxiety (Gudjonsson, 1997) and the presence of negative life events (Drake, 2010). Many studies have demonstrated that suggestibility scores on the GSS negatively correlate with measures of intelligence (Clare & Gudjonsson, 1993; Curci, Bianco, & Gudjonsson, 2017; Gudjonsson, 2003, 2013; Richardson & Kelly, 1995), suggesting that suspects with limited cognitive abilities or cognitive disabilities may be at particular risk. Suggestibility can also reflect state vulnerabilities, such as sleep deprivation (Blagrove, 1996) and alcohol and drug withdrawal (Gudjonsson et al., 2004).

Later, we will examine courts' decisions about experts, experts' effects on trial proceedings and appeals, and jurors' perceptions. As we discuss below, however, suggestibility appears particularly relevant not only as an individual factor but as part of the larger totality of the circumstances,

particularly in light of the other two factors associated with false confessions: investigatory biases and coercive interrogation tactics.

State Vulnerability

Several factors increase state or temporary vulnerability. Stress and fatigue are nearly ubiquitous in police interrogation rooms, and scholars have long recognized stress and fatigue as factors that increase the likelihood of both true and false confession (Meerloo, 1951, 1956; Sargant, 1957; cf. Frenda et al., 2016; Santtila, Alkiora, Ekholm, & Niemi, 1999). Suspects generally enter interrogation settings during some of the most difficult moments of their lives, and suspects who face interrogation about serious crimes often experience extreme stress, sometimes with debilitating fear of the consequences of confession—true or false confession. While guilty suspects may fear the consequence of their confessions, innocent suspects typically experience extensive stress when accused of serious crimes, particularly when police investigators who appear confident of the suspect's guilt use intense tactics, such as FEPs. Earlier, we examined the ways that suspects' typically high stress levels interfere with police attempts to use behavioral deception detection. It follows that the same factors associated with abnormal levels of stress that interfere with behavioral deception detection and even polygraph examinations would also make an innocent individual susceptible to other interrogation strategies.

Beyond stress and fatigue, other transitory factors can increase the likelihood of confession, such as intoxication (see Chojnacki, Cicchini, & White, 2008) or withdrawal from intoxication (Santtila et al., 1999). Grief may also make suspects vulnerable; Costanzo and Leo (2007) note that "several false confessions have involved a husband or son who, in a state of grief, confessed to killing a wife, mother, or sister" (p. 77). Suspects may also be particularly tired, and long interrogations compound the effects of fatigue. Legal experts Steven A. Drizin and Richard A. Leo (2004) report that the vast majority (more than 90%) of police interrogations require less than two hours but that 84% of their sample of 44 documented false confessions occurred in interrogations that lasted more than six hours. They found that 34% of interrogations leading to documented false confessions lasted six to 12 hours and that 50% lasted

more than 12 hours; the mean for all false-confession interrogations was 16.3 hours, substantially longer than typical interrogations.

In the mid-twentieth century, courts raised these concerns. As we noted in the opening chapter, courts in the early 1900s limited and then banned torture in police interrogation rooms, and then they limited other forms of mistreatment. In 1941, officers interrogated E. E. Ashcraft for 36 straight hours about the murder of his wife (*Ashcraft v. Tennessee*, 1944). He then confessed. Eventually, the U.S. Supreme Court rejected the confession due to coercion and did so without discussion of any vulnerability on the part of Ashcraft. The Court examined only the behavior of the investigators (see Young, 1996) and ordered a new trial. Similarly, In *Reck v. Pate* (1961), the U.S. Supreme Court rejected a confession that included many forms of coercion, including food deprivation and providing only limited treatment for health issues for several days, while interrogating Emil Reck, a suspect with a diagnosed cognitive disability.

Another example of a state vulnerability in response to an interrogation in the literature is memory distrust syndrome (Gudjonsson & MacKeith, 1982). We include it as an example of a state vulnerability because several factors in the interrogation process work together to generate a suspect's distrust in their own memory. First, there needs to be a trigger. In an interrogation, this can occur when the officer accuses the suspect of being the perpetrator. Second, the accusation must be plausible. For example, if the suspect was intoxicated when the crime was committed then it is plausible that the suspect would not have memories of the event. As we noted in the previous chapter, experimental studies have revealed that more plausible accusations are more likely to lead to false confessions than are less plausible accusations (Stewart et al., 2018). A plausible accusation leads to third factor: acceptance. The suspect accepts that the event may have happened and makes statements such as "Maybe I did it and don't remember." During the reconstruction phase, the suspect begins to add details to their memory of the event. These recalled facts may have been provided within the interrogator's questions or illustrated in photos or other evidence used in the interrogation process. For example, when interrogating members of the Norfolk Four, the interrogators relied significantly on photos of the crime scene and victim (Wells & Leo, 2008). The recorded confessions included information from these photos, which also likely shaped Joseph Dick's fabricated

memories of this crime he did not commit (Bikel, 2010). When questioning the Beatrice Six, the sheriff's department showed a video of the crime scene that included the furniture in the victim's apartment. When the suspects falsely confessed to the crime, they included information about the scene from the video (Ferek, 2016). Many suspects eventually experience the last stage, resolution. Once away from the stress of the interrogation (e.g., with a chance to rest, food, contact with family members), the suspect may review case evidence and realize that they could not have committed the crime. Resolution can occur the next day or many weeks later (Gudjonsson, 2003; Gudjonsson, Sigurdsson, Sigurdardottir, Steinthorsson, & Sigurdardottir, 2014; see Lech, 2011, for a historical example of Frank H. Schwable's sudden resolution and rejection of his false confession). Memory distrust syndrome can greatly increase the difficulties in identifying a false confession.

Investigatory Biases

The biases of investigators, including police, district attorneys, defense attorneys, and legal investigators, play prominent roles in false confessions. First, there are general biases, particularly for law enforcement officers. Police generally show a guilty bias: they more typically assume suspects to be guilty rather than innocent (Masip, Alonso, Garrido, & Anton, 2005; Meissner, & Kassin, 2002). Many police perceive it to be "a truism among detectives that all suspects lie" (Leo, 1996a, p. 281). Some aspects of these biases appear to be triggered by typical aspects of police work; in a controlled experimental study, psychological researchers Moa Lidén, Minna Gräns, and Peter Juslin (2018a) found that the decision to detain suspects starts guilt-presumptive biases that extend into the interrogation room.[5] Beyond these general biases, other specific biases increase the likelihood of false confession and increase the risks that false confessions will lead to miscarriages of justice.

As we discussed earlier, some trainers of police interrogators endorse a Behavioral Analysis Interview, in which officers assess whether a suspect is truthful or deceptive (see, e.g., Inbau et al., 2013; Jayne & Buckley, 2017). If police conclude that a suspect's behavior is deceptive, investigators then move from interview to interrogation, which generally begins with direct confrontation of the suspect with their guilt. As discussed

previously, the substantial research literature assessing behavioral deception detection includes hundreds of peer-reviewed studies and thousands of participants, and consistent findings reveal that the accuracy of these approaches is far closer to chance (i.e., 54% accuracy when chance is 50%) than many observers may assume. Despite these consistent findings, police detectives estimate their deception detection accuracy at 75% (Kassin et al., 2007).

In addition to these general concerns, misconceptions about behavioral lie detection may be particularly relevant for suspects who belong to groups culturally associated with crime. As we discussed previously, in interrogation settings, relevant cultural stereotypes increase the likelihood that African American and Latino suspects may appear more guilty for reasons that have nothing to do with evidence or actual guilt (Najdowski, 2011; Najdowski et al., 2015).

This convergence of factors—police who expect suspects to be guilty and who believe that they can accurately detect deception even though they typically perform close to chance—can lead police to mislabel innocent suspects as guilty and then to apply confrontational and deceptive interrogation strategies to innocent suspects. This misclassification error serves as a critical junction in the interrogation process that can lead to confrontation interrogations, false confessions, and eventual mistaken convictions (Leo & Davis, 2010). Experimental scholarship and case studies demonstrate the power of these biases.

Multiple scholars have systematically manipulated the biases of mock interrogators under controlled conditions. In one study, researchers assigned students to be factually guilty or innocent (i.e., student suspects either committed a mock crime or did not) and assigned other students to act as interrogators (Kassin et al., 2003). They then informed student interrogators that 80% of suspects were innocent or that 80% of suspects were guilty. These experimentally assigned biases shaped interrogators' behaviors such that those who had a guilt bias used more interrogation tactics and exerted more confession pressure. These behaviors were particularly intense when guilt-biased interrogators faced innocent suspects, whose persistent denials and related behaviors were viewed as defensive and as evidence of guilt by both the interrogators and other observers who listened to audio-recordings of the interrogation. British psychologist Carole Hill and colleagues (2008) used similar procedures

and found the guilt-biased interrogators used more guilt-presumptive questions, inducing more defensive feelings and behaviors in suspects. When other observers later listened to audio-recordings of only the suspect, these observers viewed suspects who were questioned by guilt-biased interrogators as more defensive and more likely to be guilty. How do actual cases reflect these experimental findings?

An example of the power of investigatory biases in interrogation involved Robert Dewey, who was convicted of a 1994 murder, even though he did not confess to the crime. Dewey's behavior fit police biases about guilty suspects. During the investigation, he attempted to deceive officers about his name, he hid in a closet as police questioned his friends, and he tried to leave town (Fender & Lofholm, 2012). Additionally, he acted nervous during interrogation, at trial, and elsewhere. His behavior fit police expectations for guilt, and, in fact, Dewey *was* guilty of multiple crimes. He had repaired an acquaintance's motorcycle, and, when the owner failed to pay him, he stole the owner's handgun. Dewey, a previously convicted felon who now had stolen an item he could not legally own, was also using methamphetamine. Dewey was not, however, guilty of the heinous assault and homicide for which he was convicted (Fender & Lofholm, 2012). The evidence against Dewey was weak. It included statements from unreliable witnesses and early-1990s analysis of the bloodstains found on Dewey's shirt. The blood analysis revealed the blood could have come from the victim, from Dewey (as Dewey claimed), or from 45% of the population of the United States (Fender & Lofholm, 2012). As observers noted from a hindsight perspective, "it's easy to wonder how a jury ever convicted him" (Fender & Lofholm, 2012, ¶4). Investigatory biases obscured the lack of fit between the evidence and his conviction.

Many similar false confession cases exist, in which investigatory biases overwhelmed the apparent lack of fit between the confession and the evidence. In the Beatrice Six case, no physical evidence (e.g., hair, blood, DNA) existed to connect any of the suspects to Wilson's apartment. Money was all over the apartment, and the small residence was tidy. Yet members of the sheriff's office insisted that six men and women entered the apartment with the intent to rob Wilson and committed a violent sexual assault. These hypotheses did not fit evidence from the crime scene (Ferek, 2016).

Police in Oakland, California, arrested Felix, a 16-year-old suspect in a homicide case (Shipler, 2012). Police strongly believed that they had the right suspect, and their biases overwhelmed exculpatory evidence that emerged during the interrogation. Felix confessed to the crime but described his escape in a way that did not fit the evidence. He drew the crime scene incorrectly, and he included a relevant alley only when prompted by the detectives (Shipler, 2012). Even with this clear contamination—his incorporation into his confession of crime details only after these were provided to him by officers—the failure of his confession to fit the evidence did not raise questions about his guilt. Felix then provided police with a known, and easily verifiable, falsehood: he claimed that he had given the weapon to his grandfather. Both of his grandfathers were deceased, and he believed that inclusion of this detail in his confession would prompt questions. Neither this known falsehood nor the lack of fit between the evidence and his confession led to questions about his confession by police or district attorneys. *No one* (i.e., not police, district attorneys, legal investigators for either side, the judge, or even his own defense attorneys) caught these issues. He escaped conviction only because *he* discovered iron-clad exonerating evidence that could penetrate the biases held by all individuals involved in his case: He had been incarcerated for another offense at the time of the crime (Shipler, 2012).

Investigatory biases were also relevant in the conviction of Kirk Bloodsworth (Innocence Project, 2018b; Pendergrass, 2014; *State v. Bloodsworth*, 1992). As we discussed earlier, police erroneously believed that they could accurately use behavioral deception detection to evaluate Bloodsworth's interactions with the rock and determine his guilt. They failed and became more convinced of his guilt. Police then viewed Bloodsworth's other statements through increasingly biased lenses. When Bloodsworth made ambiguous statements (e.g., he claimed that he had done something that would impact his marriage), police presented these statements at trial as evidence of guilt. Bloodsworth was actually talking about his failure to purchase groceries as requested by his wife, but the perception that he had falsely confessed persisted through his trial and even after his exoneration and release. Even the Innocence Project website listed him as a false confessor until Forrest shared this with him, at which point he contacted the Innocence Project and they changed his classification (personal communication, 2007).

There was another way that Bloodsworth's interactions with the rock misled investigators: The first set of interrogators did not tell the second set of interrogators that they had used the orchestrated FEP.[6] This subsequent set of interrogators believed, incorrectly, that the nature of the murder weapon had been withheld from the media and from all potential suspects. Therefore, when the second set of interrogators started their interrogation and Bloodsworth asked about the rock, they incorrectly assumed that only the perpetrator could know this detail, which increased their mistaken confidence in Bloodsworth's guilt.

Across these and other cases, high confidence in the suspect's guilt shaped investigators' perceptions of the exculpatory evidence. In other words, they overlooked evidence that did not fit their belief in the suspect's guilt. This "tunnel vision" (Findley & Scott, 2006) and the consequences—the increased risk of a miscarriage of justice—are not unique. In a later chapter, we will examine the ways that false confessions interfere with attempts to corroborate them with independent evidence. Many cases justify these concerns. For example, five teenagers confessed to the 1989 attack on Trisha Meili, also known as the Central Park Jogger. The teens' confessions did not match each other, the facts of the crime, or the physical evidence (Burns et al., 2013). Despite these failures of corroboration, all were convicted. Similarly, Damon Thibodeaux confessed to using a gray or white cord to commit a homicide involving a red cord; this known false detail did not prevent the interrogator(s), the jurors, or the judge from accepting his confession (Innocence Project, 2018d). As we discuss in later chapters, even when DNA evidence excludes a suspect, a confession can overwhelm the DNA evidence for police, prosecutors, legal investigators, courts, and even defense attorneys. Juan Rivera (Innocence Project, 2018e; *People v. Rivera*, 2011) and Jeffrey Deskovic (Innocence Project, 2018a) were both convicted of heinous crimes on the basis of their confessions, even as the DNA evidence indicated different perpetrators.

Sadly, these cases are not unique. Many other cases exist with similar or even more severe errors (see, e.g., Garrett, 2010; Warden & Drizin, 2009). Later in the book, we return to the ways that confession evidence affects evaluations of other evidence, investigatory decisions about the confessor and other suspects, and perceptions and decisions of attorneys, trial and appellate courts, and jurors. We also examine other

consequences, such as the impacts of investigatory biases on plea decisions, trials, and appellate court reviews on the journey from a false confession to a miscarriage of justice.

There are other ways that investigatory biases shape police responses, and we briefly note one more here. As we discussed earlier, police may interrogate survivors of sexual assault regarding the validity of their accounts, and police biases shape these interrogations. In 2008, when an 18-year-old woman reported a sexual assault to police in Lynnwood, Washington, the officers found her story to be unusual. Despite marks on her arms and a medical examination that corroborated her description of the assault, police rejected her claims (Hefley, 2013). Under pressure from officers in a police interrogation room, she recanted, and they charged her with false reporting. As soon as the woman returned to the group home where she lived (i.e., a group home for young adults who had previously been in the state's foster care system), she insisted that she had falsely recanted under police duress and sought legal support. Despite her claims, the group home where she lived informed her that if she lied to police she could not keep her place to live and required her to attend mandatory mental health counseling. She eventually paid a fine and attended court-ordered counseling for false reporting. Only when Colorado police investigators found unequivocal evidence of her assault among other artifacts collected by a serial rapist did Lynnwood police reopen the investigation (Hefley, 2013). Although this is false recanting of a crime report rather than a false confession, police biases played a clear role in these events. As the Lynnwood Police Chief told a reporter, "We were wrong. Everybody feels terrible about it" (Hefley, 2013, ¶5). In this case as in others, what investigators believe, or fail to believe, about suspects or victims can dramatically shape outcomes.

Interrogation Tactics

As noted previously, several interrogation tactics raise important questions about false confession, and we note these here only briefly. The most controversial tactic is the FEP, which appears in most documented false confessions (Kassin et al., 2010) and raises false confession rates by more than 20% in experimental studies (Stewart et al., 2018). Similarly, uses of minimization (i.e., to underemphasize the legal or moral severity

of an alleged crime) and maximization (i.e., to overemphasize the legal or moral severity of an alleged crime) both emerge as potential causes of false confessions in experimental studies (Horgan et al., 2012; Russano et al., 2005; Narchet et al., 2011) and in actual cases. After our earlier reviews of police interrogation and deception, we now examine ways that interrogation tactics interact with other factors and the ways that these individual influences and interactions contribute to the totality of the circumstances.

Interactions of Factors

Although we have separately examined these three categories of factors that lead to false confessions, actual false confessions are rarely simple events. These factors typically interact in complex ways. For example, investigatory biases may affect perceptions of the outcomes of deceptive interrogation tactics. Had police not used an orchestrated FEP *or* had police not been strongly convinced of Bloodsworth's guilt in advance (after five confident but incorrect eyewitnesses' identifications), this case may not have resulted in the conviction of an innocent person. Similarly, in another case we will discuss later, a false confessor's cognitive disability, a trait vulnerability, likely combined with his extreme fatigue, a state vulnerability. This combination of factors left him powerfully affected by confident officers who were biased in toward his guilt (*Sanchez v. Hartley*, 2016).

Similarly, Kassin (2006) described the false confession of Thomas Sawyer. During interrogation, Sawyer sweated profusely and showed other behavioral signs believed to be associated with deception. Police who were highly confident of his guilt did not know that Sawyer was recovering from alcohol addiction and struggled with an anxiety disorder; therefore, they believed—incorrectly—that his behaviors showed deception and guilt. They persisted with an intense interrogation for 16 hours. Fortunately, police eventually dropped the charges despite Sawyer's false confession (Kassin, 2006).

Those who train police interrogators have responded to concerns about some potential interactions. For these reasons, John E. Reid & Associates, Inc. (2013) and others (e.g., International Association of Police Chiefs, 2012) recommend against using FEPs with vulnerable suspects. These sources include both trait and state vulnerability in their

recommendations. More specifically, John E. Reid & Associates, Inc., caution against using FEPs with juveniles, adults with cognitive disabilities, and others who have increased trait or state vulnerability.[7] Several cases support these recommendations.

Marty Tankleff was 17 years old when his parents were attacked by an assailant with a knife; his mother was found dead, while his father was alive but unconscious (Friedman, 2018). Despite his recommendation that police investigate his father's business partner, who had violently threatened his parents and been the last person to leave on the night of the homicide, police interrogated Tankleff (Friedman, 2018). They used extensive FEPs. They claimed, falsely, that Tankleff had been found holding his mother's hair, which indicated his guilt (i.e., a scientific FEP), and that his father had briefly regained consciousness and identified his son as the killer—a testimonial FEP (Kassin et al., 2010; Perillo & Kassin, 2011). Tankleff, believing detectives' claims and believing that his father would never lie, wondered if he had blacked out during commission of the acts, and he confessed to the crime (Friedman, 2018). Unfortunately, his father never regained consciousness and died soon after Marty's confession. Despite Tankleff's immediate attempts to recant his confession, he served 17 years in prison for homicide; charges were finally dismissed nearly 20 years later (Friedman, 2018).

In a similar case, also with a child suspect, police continually rejected the denials of 14-year-old Michael Crowe, suggesting that, even if he did not recall killing his sister Stephanie, he did so. In a complex act of deception, police informed Michael that there could be both Good Michael and Bad Michael and that Good Michael would not remember if Bad Michael had committed the crime (see Allocca, 2015). During the interrogation, police also threatened Michael with punishment in adult prisons and, simultaneously, offered to help him. Michael confessed to the crime. The case proceeded to trial, and jury selection was underway when police learned that previously overlooked DNA evidence indicated a different suspect. DNA did not match Michael but matched Richard Raymond Tuite, a person who was housing-insecure or homeless, had a long history of small crimes, and struggled with substantial mental illness (Saur, 2012). Among other evidence, Tuite had Michael's sister's blood on his sweatshirt. In 2012, 14 years after Stephanie's death, in a rare legal event, a judge ruled that Michael Crowe was factually innocent

of his sister's 1998 homicide (Krueger & Stickney, 2012). In 2013, Tuite returned to trial, where his attorneys raised questions about the forensic evidence and showed jurors the video-recording of Crowe's confession; jurors then acquitted Tuite. The case remains unresolved. Although we cannot draw conclusions from one complex case, even after Crowe was declared innocent his confession appeared to retain the power to shape jurors' decisions.

John E. Reid & Associates, Inc. (2013) and some police organizations also warn against using deception, particularly FEPs, with suspects who have state vulnerabilities, such as intoxication at the time of the crime or during the interrogation (International Association of Police Chiefs, 2012). Multiple cases support these recommendations. For example, the first teenager of the Fairbanks Four to falsely confess, Eugene Vent, was a 17-year-old Native Alaskan, and when he was arrested his blood alcohol level was .158, suggesting substantial intoxication and impairment (McDannel, 2016). Despite these trait and state vulnerabilities, Vent's status as a member of a group that is systematically devalued in Alaska (for studies of members of other similar groups, see Najdowski, 2011; Najdowski et al., 2015), and Vent's consistent denials, the detective employed confrontational interrogation strategies and a series of FEPs, including a claim to have Vent's footprint in the victim's blood. During the long interrogation without a parent, guardian *ad litem*, or other representative, Vent came to doubt his memories, or lack thereof, and falsely confessed. Beyond these individual factors and interactions, we now examine the totality of the circumstances.

Recognizing the Totality of the Circumstances

As we noted previously, rarely does a false confession case result from a single cause. In some cases, multiple factors interact, but many of these cases demand examination of the totality of the circumstances. In the Beatrice Six case, guilt-presumptive investigators interviewed a vulnerable suspect and became further convinced of the guilt of six innocent people. The subsequent presentation of crime scene photos and video to the suspects contaminated the investigation and provided the suspects with knowledge that appeared to indicate their guilt. Additionally, extensive uses of false-evidence ploys (e.g., about failed polygraph

examinations) and a prominent failure by a forensic analyst, combined with other difficulties, affected the totality of the circumstances, and led to an exceedingly expensive failure of justice. In these and other cases, the impacts of false confession extend from the interrogation room through later investigations (or decisions to end investigations), potential plea negotiations, trials, and appeals. In our next chapter, we turn to the impacts of false confession on defendants' lives and to the consequences of confession. As we will see, false confessions dramatically shape every part of the totality of the circumstances that define these cases.

5

Costs and Consequences of Deception, Coercion, and False Confessions

The Norfolk Four

What can be accomplished in 20 years? For some of us, education, a career, a family. For others it can take 20 years to be pardoned for a crime not committed. In the case of the Norfolk Four and the brutal murder of 18-year-old Michelle Moore-Bosko in July of 1997, it was not until 2017 that Virginia Governor Terry McAuliffe issued a full pardon for Danial Williams, Eric Wilson, Derek Tice, and Joseph Dick, Jr. The actual perpetrator, Omar Ballard, had confessed in a letter that he alone had murdered Michelle, and DNA evidence supported his claim. Why were the Norfolk Four and several other men arrested for the rape and murder of Michelle Moore-Bosko? It was a perfect storm of innuendo, police bias, coercion, and suspect vulnerability, all of which shaped the totality of the circumstances in this case. If it had not been for the DNA evidence and Omar Ballard's desire to intimidate a family friend, Williams, Wilson, Tice, and Dick would likely still be in prison today. Although we describe the interrogations of the Norfolk Four briefly here, more detailed accounts are included in Wells and Leo's (2008) *The Wrong Guys: Murder, False Confessions, and the Norfolk Four,* in the Medical Detectives episode *Eight Men Out*, and in Frontline's *The Confessions* (Bikel, 2010).

When Navy sailor Billy Bosko returned from his extended time aboard ship, he expected his wife, Michelle, to greet him at the dock. When she did not, he rushed home, excited to see her. Instead he found her body on the bedroom floor of their Norfolk apartment. She had been stabbed multiple times. Billy Bosko covered her exposed body with a comforter and quickly called police from neighbor Danial Williams's apartment. The police arrived, processed the crime scene, and began interviewing friends and neighbors of the young couple. One of

Michelle's friends, Tamika Taylor, suggested that the police focus on Williams. He had been hanging out at the Bosko residence while Billy was away, and Taylor thought Williams's behavior bordered on stalking. According to Taylor, Williams had a crush on Moore-Bosko. Taylor also suggested they look at someone who was friends with both her and the Boskos, Omar Ballard. However, once the police targeted Williams and began investigating him and his acquaintances, interest in Ballard waned. Williams's wife, Nicole, had recently been diagnosed with cancer, and the two of them shared expenses with roommate Joseph Dick, Jr. He was a man with answers. Unfortunately, the answers changed every time he was questioned by police.

Family members and teachers described Joe Dick as awkward and slow to process information (Wells & Leo, 2008). He did not have many friends, and those that he did have described him as eager to please, a trait that Gudjonsson (1995) ties to false confessions. Every description of Joseph Dick includes descriptors such as *unusual*, *strange*, and *kept to himself*. As part of his clemency petition in 1998, a psychologist diagnosed Dick with schizoid personality disorder. Characteristics of this disorder can include detachment from and a lack of interest in personal relationships as well as emotional coldness, detachment, or flattened affect (American Psychiatric Association, 2013). These characteristics made Joseph Dick particularly vulnerable to false confession, and his vulnerability would reach into every aspect of the case.

Detectives Maureen Evans and Scott Halverson interrogated Williams for several hours before the process was taken over by seasoned interrogator Glenn Ford. Ford was known for getting confessions when no one else could. To some in the late 1990s, Ford was all business and a much-needed ally in the war against crime. To others, Ford was the kind of officer who would get a win at any cost. In 2011, a federal jury also found Ford guilty of extortion and lying to the FBI (McGlone, 2011). Regardless of Ford's later conviction, Billy Bosko and Carol Moore, Michelle's husband and mother, considered him their best advocate. Even years later, Billy Bosko and Carol Moore continue to believe that because these young men all confessed they must be guilty (Jackman, 2017).

Several of the techniques that Evans, Ford, and Halverson used increase the likelihood of a false confession. Those techniques included interrogating suspects for a long time without breaks, implying leniency in exchange for confession, implying threats about the death penalty, and telling the suspects they failed polygraphs. Officers continued to rely on Joseph Dick's testimony despite the failures of his confessions to fit the evidence, the high number of errors he had in his multiple confessions, and the number of times he changed his story. Also, police leaked facts to the suspects that only the real perpetrator would know (e.g., how the victim died, what she was wearing, and where she was killed). When the suspects began incorporating these facts into their confessions, this contaminated "misleading special knowledge" (Leo, 2008, p. 254) made them look increasingly guilty.

As each sailor confessed to his role in the rape and murder of Michelle, his DNA was tested. Every DNA test excluded the sailors. Not until the police expanded their investigation to include Omar Ballard did they find a DNA match. Despite the DNA exonerations of the sailors well in advance of their trials, their confessions kept them firmly in the prosecutors' sights. According to prosecutors, rather than setting the sailors free, finding a DNA match to only Ballard just meant all of the sailors were involved along with Ballard. Their confessions, which prosecutors presented at trial, reflect police biases about the crime and their erroneous beliefs about the guilt of the sailors. Therefore, the sailors' confessions evolved by including all of the sailors as well as Ballard committing the crime.

As in the Matt Livers case, the investigation of the primary suspect began with a complaint of unusual and disturbing behavior (i.e., Livers arguing with his grandparents and Williams stalking Michelle Moore-Bosko). There were other similarities. Questioning one suspect led to the identification of multiple offenders (Livers identified cousin Nicholas Sampson, and Williams identified Dick, who then named other sailors), and police focused their tunnel vision on the wrong suspect while the true perpetrator remained free. The teens in the Livers case continued their crime spree, and Omar Ballard raped a 14-year-old girl.

The failures in the Norfolk Four case are not so different from the Livers case, and these failures illustrate the costs and consequences of false

confessions. These start with obvious costs to the wrongfully convicted suspects. These suspects lost their freedom, their military careers, their livelihoods, and their reputations (Kassin & Gudjonsson, 2004; Wells & Leo, 2008). Although these costs may appear to be limited to the short term, they extend throughout the lives of the sailors. As another mistakenly convicted individual noted, when one's background check says "homicide" (or even "homicide–cleared"), employment remains elusive at best (Timothy Masters, personal communication, April, 2010; Masters & Lehto, 2012).

In addition to these obvious costs, others emerge. The sailors' families bore costs of the entire journey through the legal system, including legal fees before trial, in the trials themselves, and then for appeals. Families sat in court and watched their sons lose their legal appeals and enter prisons with limited visitation. These defendants lost contact with family members, and they faced being ostracized from their communities, including fellow sailors, neighbors, religious groups, and other organizations. These factors can be exacerbated for individuals, such as these sailors, who confess to sex offenses, which require lifetime registration.

Beyond these consequences, there exist secondary costs of false confession. False confessions threaten the credibility of the justice system (Woody et al., 2011). The threat to community trust of police is particularly important, especially in the present cultural context of tensions between police and the communities in which they work (e.g., Alexander, 2014; National Network for Safe Communities, 2015). As a more practical concern, false confessions, and the resultant prosecution of innocent suspects, lead to financial losses and losses of credibility for police departments and district attorneys' offices (Woody et al., 2011). Additionally, states and/or departments may face civil lawsuits, or states may be required by statute to compensate innocent defendants who served jail time, as 32 states and Washington, DC, currently require in some form (Innocence Project, 2018f). Jurisdictions that consider or require compensation are growing. For example, during the writing of this book, the Norfolk Four finally received compensation for their mistaken conviction: $4.9 million from the City of Norfolk and $3.5 million from the Commonwealth of Virginia (Associated Press, 2018). For another specific example, in 2013, after Robert Dewey was

exonerated, Colorado joined the states that require compensation (Bartels, 2013). As we have seen, investigators in Dewey's case made errors but did not engage in misconduct; without evidence of police misconduct, officers' qualified immunity protected them from lawsuits and left Dewey without recourse for compensation. The revision of state law provided Dewey with financial support after exoneration, support still denied to wrongfully convicted defendants in 18 states. Not all states with compensation laws protect those who confess falsely, however. For example, Nebraska excludes defendants who falsely confess, falsely implicate others, or falsely plead guilty, unless those statements are proven in court to be caused by coercive tactics by law enforcement (see Criminal Code, NE Revised Statutes, 2009). Across all of these laws, police misconduct, particularly conduct perceived as egregious, may lead to higher awards (e.g., Masters & Lehto, 2012). As we will discuss later in the book, part of the changing legal landscape for police interrogation includes growing risks to individual officers' qualified immunity (e.g., *Sanchez v. Hartley*, 2016) and increasing numbers of officers who face individual consequences for their behavior during interrogations (Bandler, 2014a, 2014b).

The most significant secondary consequences exist for the community. As discussed in the Introduction, the actual perpetrator of the crime to which Jeffrey Deskovic falsely confessed committed another homicide while Deskovic was in prison (Innocence Project, 2018a). Similarly, as officers investigated the innocent sailors, Ballard committed another sexual assault, this time of a child. As these examples illustrate, false confessions can influence or even derail ongoing investigations. Even if there were no other consequences of false confessions, these substantial short-term and long-term costs of false confessions would raise important questions. But false confessions affect every other aspect of a case, thereby making detecting false confessions particularly difficult. Through the rest of the chapter we examine ways that false confessions themselves impede investigators' abilities to evaluate and corroborate them. As Figure 5 demonstrates, the totality of the circumstances, including legal requirements for corroboration, human thinking biases, social pressures, and other factors, can help us understand the larger picture of the difficulties in evaluating true and false confessions.

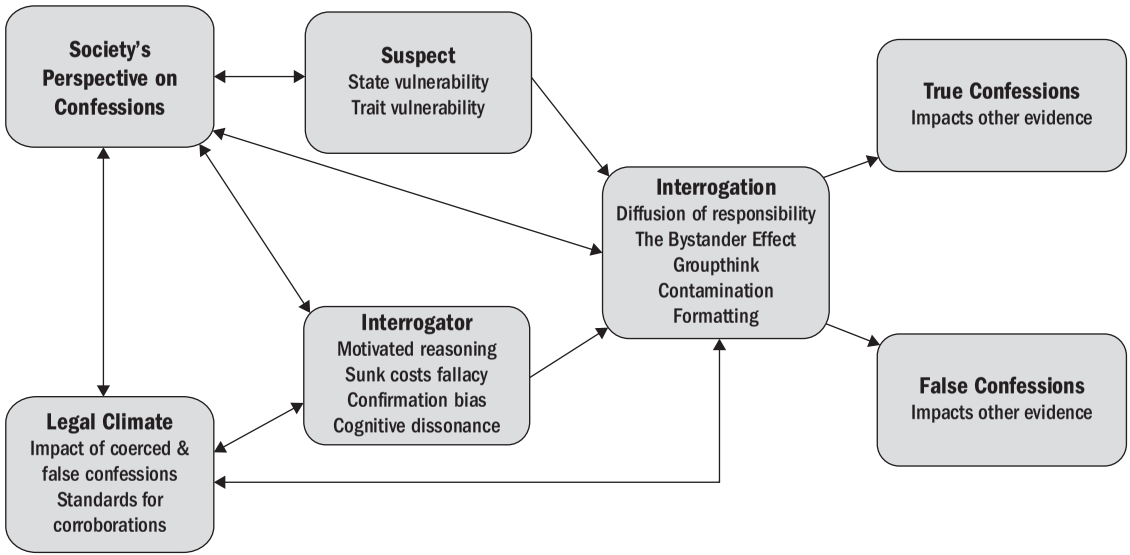

Figure 5.1. The Complex Interaction of Legal Climate, Suspect, Interrogator, and Interrogation Characteristics and Its Relationship to True and False Confessions

Impacts of Coerced or False Confessions on the Legal Process

Confessions powerfully shape each step of the legal process. The myth of psychological interrogation (Leo, 2008), which we discussed earlier, runs through these difficulties. This persistent yet false belief that no one would falsely confess in the absence of torture or severe mental illness re-emerges throughout police attempts to corroborate the confession, examinations of other evidence, considerations of plea options, and, of course, at trial. The myth affects *everyone* involved, including police officers, other legal investigators, prosecutors, judges, jurors, appellate courts, and even defense attorneys, who carry the responsibility to advocate for defendants. In this section, we examine the impacts of a confession on these and other individuals and legal processes. As we have seen throughout the book, a confession is not just a factor that increases the likelihood of conviction; a confession can shape every aspect of the processes that follow, impacting the totality of the circumstances. Confessions affect criminal trials, investigations prior to trials, and appellate reviews after trials. Confessions bring power that other forms of evidence cannot match.

Corroboration of Confessions

Thus far we have examined several confession cases in which a confession did not match the evidence or the other confessions from alleged co-conspirators. Many of these confessions have led to miscarriages of justice in part because police, district attorneys, defense attorneys, investigators, and courts accepted these confessions, which fit observers' biases, even in the face of contradictory evidence. Some of the same factors that drive the initial acceptance of false or coerced confessions also affect efforts by police and other investigators to corroborate confessions in accordance with legal standards.

Legal Standards for Corroboration

A task for police investigators who induce a suspect to confess is to corroborate the confession according to state or federal standards. Depending on jurisdiction, investigators must use *corpus delicti*, the trustworthiness standard, or—in some states, federal districts, or courts of special

jurisdiction (e.g., military courts)—other standards or combinations of standards. We open with a brief review of legal expectations, which are changing in many states, and then we examine the ways these corroboration requirements interact with interrogation techniques. We also address how risks of contamination and formatting, and evaluations of other evidence, all contribute to the totality of the circumstances and the larger difficulties in recognizing and rejecting false or coerced confessions.

Corpus Delicti

Literally translated as the "body of the crime" (Black & Garner, 1999, p. 346), *corpus delicti*, as described by a prosecutor, "is the sort of classical legal rule lawyers love. It is Latin, and thus sounds impressive" (Evig, 2013, p. 59). This rule for corroboration prohibits admission of the confession at trial unless the prosecution can use evidence independent of the confession to demonstrate that the crime occurred and that the event was actually a crime and not an accident or natural event (see Evig, 2013; Kassin et al., 2010; Leo, Drizin, Neufeld, Hall, & Vatner, 2006; Moran, 2003). This rule rests in part on the recognition that false confessions occur and that the consequences of a mistaken conviction are more severe than the consequences of a mistaken acquittal (Evig, 2013; *People v. LaRosa*, 2013). In jurisdictions that require *corpus delicti*, district attorneys cannot introduce a confession at trial unless they have independent evidence of the crime that corroborates the confession.

The *corpus delicti* standard has deep legal roots. Legal scholar David Moran (2003) traces its origin in British common law to the mid-1600s. As discussed previously, Moran (2003) and others (Anonymous, 1820; Greenleaf, 1860) have cited the false confessions and near-executions of the Boorn brothers in the early 1800s as the foundation of these concerns in the United States. These concerns in turn justified the application of *corpus delicti*. In the Boorn case, because Russell Colvin had left town rather than died by homicide (Warden, 2006; see McFarland, 1993, for an alternative account), prosecutors were left without the literal body of Russell Colvin alongside evidence that his death was homicide. Under *corpus delicti*, the lack of evidence of foul play would have precluded admission of the Boorns' confessions at trial, which in turn would have prevented their convictions and near-executions. Despite this common-law

foundation, standards have changed across several states, including many recent changes (e.g., *State v. Dern*, 2015; *State v. Hardy*, 2011).

A recent example is illustrative. The Colorado Supreme Court raised several criticisms of *corpus delicti* and moved the state to the trustworthiness standard (for reviews, see Evig, 2013; *People v. LaRosa*, 2013; Woody, 2017). First, *corpus delicti* protects defendants who confess to nonexistent crimes but does not protect innocent defendants who confess falsely to an actual crime. Second, the Colorado Supreme Court held that the rule was "outdated" (*People v. LaRosa*, 2013, p. 573) because *Miranda v. Arizona* (1966) and other precedents have limited police coercion during interrogation and therefore *corpus delicti* is not needed to protect suspects from false confessions generated by police coercion.[1] Third, the Colorado Supreme Court noted that *corpus delicti* presents definitional challenges, particularly with increasingly detailed statutes. For example, must each element of an aggravating factor in a capital case meet the *corpus delicti* standard (*People v. LaRosa*, 2013; *State v. Mauchley*, 2003)? Finally, the court's primary concern rests on difficulties corroborating some confessions in ways that meet the requirements of *corpus delicti*.

In particular, the Colorado Supreme Court noted that the requirements of *corpus delicti* "may operate to reward defendants" (*People v. LaRosa*, 2013, p. 574) who commit crimes that cannot be verified by independent evidence. Such crimes could include a homicide in which the victim's body cannot be found, a physical or sexual assault without tangible injury, or a sexual assault of a very young victim or a victim with a cognitive disability who could not verbally report the assault to police (see also Kassin et al., 2010; Taylor, 2005). These concerns shaped the disputes in *People v. LaRosa* (2013). Initially, Jason LaRosa confessed to sexually assaulting his very young daughter in a way that would not likely result in forensic evidence; he then recanted his confession (*People v. LaRosa*, 2013). Without independent evidence of the acts to which LaRosa confessed, the Colorado Supreme Court dismissed his conviction but then moved the state to the trustworthiness standard.

The Trustworthiness Standard

The trustworthiness standard emerged from a series of United States Supreme Court decisions about financial crimes (Moran, 2003; *Opper v.*

United States, 1954; *Smith v. United States*, 1954; *United States v. Calderon*, 1954). Rather than a single method of corroboration as required by *corpus delicti*, the trustworthiness standard presents a range of options (Evig, 2013). The Colorado Supreme Court provided three corroboration options, some of which distinctly lower the bar for corroboration relative to *corpus delicti*. For example, the first method involves "facts that corroborate facts contained in the confession" (*People v. LaRosa*, 2013, p. 578). The evidence need not corroborate *all* facts in the confession but "that some facts corroborate some parts of the confession" (Evig, 2013, p. 62). The Colorado Supreme Court described the second method of corroboration as involving "facts that establish the crime which corroborate facts contained in the confession" (*People v. LaRosa*, 2013, p. 578). The distinctions between these two methods often appear challenging to observers; Evig (2013) summarized this difference by stating that "the first [method of corroboration] uses corroboration to prove a crime occurred, while the second [method of corroboration] uses corroboration [with evidence independent of the confession] to show who committed a crime" (p. 62).

Evig (2013) cites *Fontenot v. State* (1994) as a productive example of this second form (see also *Fontenot v. State*, 1987). Investigators had evidence of the crime but not of Karl Allen Fontenot's guilt. Fontenot's confession was similar enough to independent evidence (e.g., Fontenot confessed to the correct amount of money reported stolen, and his description of the victim's clothing matched other accounts) for the court to admit it at trial, despite many differences between his confession and the evidence. Among other serious inconsistencies, Fontenot claimed that the victim, Donna Harraway, had been stabbed when in fact she had been shot, and that the body had been burned when in fact it had not.[2]

This form of corroboration remains vulnerable to contamination (discussed subsequently); an innocent suspect who has learned crime details from police during interrogation could include these details in a confession that would appear both true and easy to corroborate. For example, in the Norfolk Four case, Williams had already been in the victim's apartment, and he had seen the layout of the bedroom, the color of the comforter, and Michelle Moore-Bosko's clothing. Eric Wilson also identified her shirt and furniture from photos shown to him by interrogator Ford. In an even stronger case of contamination, the sheriff's

department involved in the Beatrice Six case showed each defendant video of the crime scene taken by the Beatrice Police Department. Unsurprisingly, the defendants' later confessions included details from the video, increasing officers' confidence that they had the correct defendants, despite the defendants' actual innocence.

The third method of corroboration of a confession relies on the "facts under which the confession was made," which can include "facts of any sort whatever, provided only that they tend to produce a confidence in the truth of the confession" (*People v. LaRosa*, 2013, pp. 577–578). This exceedingly vague corroboration method could include a wide range of factors. Evig (2013) suggested that a suspect who confesses repeatedly in different contexts or does not have evident reasons for false confession could meet this criterion for admission of the confession at trial, even without independent evidence to corroborate the confession. Interestingly, Evig (2013) also speculated that a suspect who confesses first to a family member could lead a court to accept the veracity of the confession and meet this requirement, although he did not reference a specific case.

How did a different Colorado district attorney react to an actual case with an initial confession to a family member? Did these conditions increase the district attorney's confidence in the trustworthiness of the confession, as Evig (2013) suggested, or did the opposite occur? In October 2013, 17-year-old Austin Sigg confessed to his mother that he had assaulted and murdered Jessica Ridgeway. His mother called the police, and then Austin came to the phone and confessed to the 911 dispatcher. Sounding very much like the child he was, he stated, "I murdered Jessica Ridgeway . . . I have proof that I did it. There is no other question" (Steffen, 2013). Rather than assume that the confession was trustworthy, the district attorney immediately raised doubts. "We wondered if it was a mistake. That was the first question: Was this a false confession?" (Steffen, 2013, ¶56).

There exist other disagreements about the role of the "facts under which the confession was made." Juan Manuel Velasquez-Trinidad walked into the police station in Greeley, Colorado, and confessed to the murder of his wife. Some observers assumed that the case would immediately be closed, particularly because the confession (i.e., to homicide with a knife) fit the evidence—the victim had died of multiple stab

wounds (Phillips, 2014). The chief of police disagreed, stating, "Even in one where the guy comes in and confesses, you've still got a lot of work to do to see if there's some reason he'd falsely confess" (Phillips, 2014, ¶14). After careful investigation, Velasquez-Trinidad was convicted by a jury (Moylan, 2015). Across these cases, investigators disagree substantially about the interpretation of "the facts under which the confession was made"; this standard has the potential to lower the bar for corroborating confessions.

Some states use modified standards. For example, New Mexico uses the Paris rule, under which the confession along with substantial independent evidence tending to establish its trustworthiness can establish *corpus delicti* (Moran, 2003). For another alternative, Kansas relies on *corpus delicti* unless the crime is unlikely to produce forensic evidence; then courts apply the trustworthiness standard. These requirements for corroboration, whether *corpus delicti*, the trustworthiness standard, or a modified standard, dictate how investigators must corroborate the confession for admission at trial.

Regardless of the corroboration method used in a state, the bar for corroborating the confession remains low. What about other potential legal safeguards, such as voluntariness hearings, the low standard of proof required to admit a disputed confession at trial, the abilities of jurors to recognize and reject confessions, and appellate court reviews? We will return to these questions and explore the difficulties that plague trials, particularly in cases in which false or coerced confessions corrupt the process. In the remainder of this chapter, we discuss the ways that a false or coerced confession presents and compounds corroboration difficulties.

Challenges to Corroboration

Regardless of the rule used in a particular jurisdiction, investigators face myriad challenges in the corroboration of confession evidence. Some of these obstacles emerge from human decision processes and from the social contexts in which observers evaluate confession evidence, and others reflect problems that may occur during interrogation, such as unintentional contamination that remains undetected without a complete video-recording.[3] Additionally, confession evidence is so powerful

that it affects other evidence related to the crime, as discussed below. Of course, beyond individual causes or interactions between specific causes, all of these factors contribute to the totality of the circumstances.

Human Thinking Biases

Several typical human cognitive biases contribute to the likelihood that a false or coerced confession can lead to a miscarriage of justice. Throughout this review of relevant cognitive biases, we emphasize a central theme. These problems exist because, as human decision makers, police officers and other investigators think like people.

MOTIVATED REASONING

Police officers, legal investigators, district attorneys, defense attorneys, and others seek to be correct in their decisions, particularly when questioning guilt in severe crimes. Anecdotally, in *every* conversation we have had with police, officers *universally* state that eliciting and believing a false confession and then using that confession to secure the conviction of an innocent person would be one of the worst events in their law enforcement careers. We expect these individuals to be deeply invested in making accurate decisions, particularly about serious crimes in their jurisdictions. In this way, all parties are motivated reasoners, and our desire to be right often limits our abilities to critically evaluate important issues (Kunda, 1990).

In addition to these motivations, police officers as well as prosecutors face more mundane motivations to resolve cases. As noted by Wells and Leo (2008), a police officer who does not resolve a sufficient percentage of cases may not retain their specialized or higher-status positions (e.g., as a detective working homicides) or may place careers, livelihood, family security, and future employment in law enforcement at risk. These are relevant factors, of course, and our conversations with officers make it evident that other factors also inspire officers. For many individuals, these jobs are more than occupations and instead function as a calling and a deep-seated part of the identities of officers (see Wyllie, 2012).

As motivated reasoners, humans use their goals and desires to shape evaluations. We are typically more critical of claims that challenge our preexisting beliefs and less critical of claims that support our preexisting

beliefs (Kunda, 1990; Klaczynski & Gordon, 1996). These tendencies are strongest when we consider important questions (Fiske & Taylor, 2008), such as questions about guilt. Due to these cognitive biases, investigators who are highly confident in the guilt of a suspect may have substantial difficulties recognizing exculpatory evidence.

SUNK COSTS FALLACY

One cognitive bias that affects our reasoning is the sunk costs fallacy, which occurs when we continue to pursue "inferior alternatives merely because we have invested significant, but nonrecoverable, resources in them" (Olivola, 2018, p. 1072). This fallacy affects our reasoning. For example, we may easily imagine or recall the difficulties in ending a relationship into which we have invested substantial resources, even if ending the relationship seems beneficial. Recent scholarship (Olivola, 2018) has demonstrated that we are also sensitive to the sunk costs of others, leading participants to choose less valuable options when others have invested costs. These findings have implications in interrogation settings, when officers and their colleagues invest substantial time and energy into identifying, detaining, and interrogating a suspect and then have to decide whether to continue to sink costs (i.e., more of their limited time and resources) into pursuit of this suspect (see Lidén et al., 2018a). These factors appear likely to exacerbate motivated reasoning in interrogations.

CONFIRMATION BIAS

The difficulties faced by motivated reasoners are further compounded by confirmation bias, also discussed as *tunnel vision* (Findley & Scott, 2006; Kassin, Dror, & Kukucka, 2013; Martin, 2001–2002; Peña Perez, 2014). We typically seek to confirm what we already believe rather than to seek disconfirmation—evidence that may challenge what we believe (Nickerson, 1998). Confirmation bias influences many aspects of investigations. For example, psychological researchers Karl Ask and Pärs Anders Granhag (2007) provided experienced investigators with a hypothesis about the identity of the perpetrator in a fictitious criminal case. They then asked the investigators to evaluate claims of a witness whose testimony challenged the hypothesis. Instead of re-evaluating the hypothesized theory, the investigators devalued the reliability and credibility of the

witness. How could these cognitive biases influence investigators' evaluations of confession evidence?

Confirmation bias explains some of the overwhelming power of confession evidence. Confessions, which are typically very difficult to doubt due to the myth of psychological interrogation and other factors, inspire such strong confirmation biases that in many cases not even blatant disconfirmatory evidence can induce doubt. For example, police officers and prosecutors in the Norfolk Four case did not view the absence of DNA evidence connecting the sailors to the crime as a barrier to prosecution, even as they relied on DNA to prosecute Omar Ballard. Similar disconnections between confessions and evidence exist in other false confession cases, including Damon Thibodeaux, the teenagers wrongfully convicted in the Central Park Jogger case, and the 16-year-old suspect in Oakland, California, who discovered exonerating evidence on his own.

These biases influence not only police officers and district attorneys; *anyone* can overlook evidence that does not fit a confession. Interviews with several of the defense attorneys in the Norfolk Four case shed light on their motivations for plea deals (Bikel, 2010). They believed they were negotiating the best outcomes for their clients, whom they believed to be guilty (Wells & Leo, 2008). For example, when faced with multiple confessions to a capital crime, Joseph Dick's defense attorney believed the false confession and saw a plea as appropriate to save his client from losing a death penalty trial and facing execution (Bikel, 2010). Defense attorneys' acceptance of the false confessions may also explain their decisions to allow the police to re-interrogate the defendants without defense attorneys present (Wells & Leo, 2008).

Even these examples underrepresent the power of confession evidence. Confessions are so powerful that they can affect perceptions of even the best forensic evidence: DNA. As we have seen, there exist several cases in which false confessors were DNA-exonerated *before* trial yet were still convicted, including the cases of Juan Rivera and Jeffrey Deskovic. In Rivera's case, prosecutors argued that the 11-year-old victim had consensual sexual relations with another man, who left evidence, before being assaulted by Rivera, who left no evidence (Martin, 2011). Although this explanation of the crime contradicted claims by those who knew the victim that she was not sexually active, the introduction of what some

defense attorneys call "the unindicted co-ejaculator" convinced the jury that Rivera was guilty despite the DNA evidence (see Appleby & Kassin, 2016, for a study of these factors). Similarly, in the case of the Norfolk Four, the DNA evidence did not point to any of the four sailors who falsely confessed and were convicted for the crime (Wells & Leo, 2008). The DNA evidence did, however, identify the individual who truthfully confessed. Despite the actual perpetrator's corroborated factual confession, his DNA identification, *and* his claim that he committed the crime alone, the sailors' false confessions led to their erroneous convictions and incarcerations. Appleby and Kassin (2016) found that even a poor explanation by district attorneys for the conflict of the confession and DNA evidence can lead jurors to be more likely to convict in cases in which DNA indicates someone other than the confessor.

The case of *Sanchez v. Hartley et al.* (2016) is particularly illustrative of the power of confessions to shape the totality of the circumstances (see Woody, 2017). After many hours of interrogation, Tyler Sanchez, who has a substantial cognitive disability and had been awake for more than 30 hours, confessed falsely to a burglary but not to a sexual assault that police believed was related. The district attorney charged Sanchez with both crimes, and charges remained in place for more than two and a half years. The Tenth Circuit Court ruled that Sanchez could sue individual prosecutors and police officers, denying the law enforcement officials' claims of qualified immunity. Specifically, the court noted that police had overlooked exculpatory evidence in ways that may have been intentional or legally reckless rather than simply erroneous or negligent. What errors did the Tenth Circuit Court, with the benefit of hindsight, find to be potentially reckless?

Based on the testimony of the survivor of the assault, police were seeking a 190-pound man in his mid-40s with brown hair and no tattoos. They interrogated and accepted the confession of a 130-pound 18-year-old with very short red hair and prominent "sleeves" tattooed up both arms. There were other discrepancies between the evidence and Sanchez's confession. Not only did Sanchez fail to fit the description of the suspect, but he confessed to a known falsehood (*Sanchez v. Hartley*, 2016). In response to police questions, he stated falsely that he left a ladder under a window where the actual perpetrator had entered the survivor's home. There was no ladder under the window, and police knew this when they questioned

Sanchez. Despite this known falsehood and other discrepancies between the confession and the evidence, they charged Sanchez with the crime and maintained these charges for more than two and a half years.

This case carries particular significance due to the decision by the Tenth Circuit Court. As discussed previously, although many earlier cases exist in which defendants' confessions do not fit evidence, in most of those cases the errors of police officers did not threaten their qualified immunity or bring other sanctions. Similarly, in the cases of the Beatrice Six, the Norfolk Four, the Oakland juvenile, Damon Thibodeaux, the defendants in the Central Park Jogger case, and other false confessors, individual police officers who accepted these confessions did not face criminal sanctions or lose qualified immunity. We will return to the *Sanchez* case as we discuss the rapidly changing legal landscape related to interrogation and confession.

COGNITIVE DISSONANCE

First proposed in the 1950s (Festinger & Carlsmith, 1959), cognitive dissonance has generated extensive scholarship. Social psychologists Carol Tavris and Elliot Aronson (2007) reported that there are now well over 2000 peer-reviewed studies of cognitive dissonance. We briefly summarize this extensive literature. Festinger and his colleagues (Festinger, 1962; Festinger & Carlsmith, 1959) argued that when our attitudes and behaviors conflict we feel tension or dissonance that we seek to reduce. Therefore, we typically bring our thoughts and behaviors into alignment. Despite the commonsense appeal of the notion that people would simply change their behaviors to make their actions consistent with their attitudes, only rarely do these outcomes occur. For a short example, consider the individual who publicly endorses recycling and then tosses an empty aluminum can into the trash rather than the recycle bin. Festinger and others argue that this may lead to tension between the individual's behavior and attitudes. To reduce the cognitive tension or dissonance, the individual could retrieve the can from the trash, or the individual could bring their attitudes into agreement with their behaviors, perhaps by stating "it is just one can." As Tavris and Aronson (2007) note, across hundreds of studies, participants overwhelmingly bring their attitudes in line with their behavior rather than vice-versa. How do these cognitive forces shape officers' interrogation decisions?

When an officer seeks a warrant, arrests a suspect, or otherwise brings a suspect into an interrogation room, the officer behaviorally commits—in public and in front of supervisors and peers—to the notion that this individual is guilty (see Lidén et al., 2018a). John E. Reid & Associates, Inc. (2013) and others recommend only proceeding with interrogation when police are highly confident of the suspect's guilt. Additionally, as noted previously, John E. Reid & Associates, Inc. (2013) recommend moving from the nonconfrontational interview with open-ended questions to a confrontational interrogation *only* when the suspect's interview behavior shows evidence of deception or when officers are otherwise confident of the suspect's guilt. The risks of misclassifying an innocent suspect as guilty increase as police become increasingly confident in the suspect's guilt (Leo, 2008; Kassin et al., 2010). This increasing confidence may reflect actual evidence related to the suspect's guilt. But for observers who behave as though a suspect is guilty, doubts about the suspect's guilt may lead to cognitive dissonance, which in turn is less likely to lead to behavioral changes (e.g., ending the interrogation) and more likely to lead to attitudinal changes that support the behaviors (e.g., becoming more firmly convinced of the suspect's guilt). If cognitive dissonance theory and research findings predict that it is difficult for a proponent of recycling to retrieve an aluminum can from the trash, how much more difficult is it for police officers to revise their behaviors and publicly doubt that their suspect is guilty? In the can example, no one is watching, and the outcome does not affect the recycling advocate's career, financial future, or professional reputation. These additional social layers present in police interrogation settings make behavioral change (i.e., ending the interrogation) less likely rather than more likely. Officers face situations in which they carry the responsibility to make decisions that are extremely difficult for any human decision maker to face. These difficulties are compounded when we consider the social context as well as human cognitive biases.

The Social Context

Other findings from social psychology interfere with evaluation of confession evidence. The bystander effect, or diffusion of responsibility, may

make officers with doubts less likely to come forward, and the potential for groupthink may also limit officers' willingness to publicly express doubts about a suspect's innocence.

THE BYSTANDER EFFECT

In Brooklyn, New York, at 2:30 a.m. on March 13, 1964, Kitty Genovese was returning to her apartment from her bartending job when she was attacked, stabbed repeatedly, sexually assaulted, and left to die. This crime entered the national consciousness not because of the attack but because of the reported responses—or lack thereof—of the bystanders (Cook, 2014). The most common narrative about this crime is that 38 neighbors witnessed the attack yet chose not to call the police (Kassin, 2017b). The larger story is far more complex and includes a false confession (the individual convicted of killing Genovese was one of two individuals who confessed to another homicide; Kassin, 2017b). This event spurred additional research and policy changes, including the creation of a single emergency phone number in New York City, which in turn led to the development of the widespread 911 emergency system. Social psychologists John Darley and Bibb Latané (1968; see also Latané & Darley, 1970) found that individuals are more likely to help if alone but less likely to help in the presence of others. They reported that the responsibility for taking action diffuses in a group, and other scholars have reported similar results in a wide range of studies.

How does diffusion of responsibility influence police interrogation? As police officers evaluate the guilt of a suspect, the responsibility for ending the interrogation of a suspect believed to be innocent likely lies primarily with one officer, leading to challenges with cognitive dissonance as discussed previously. To the degree that other officers are involved, they may share the responsibility for raising questions about the suspect's guilt, and the responsibility may diffuse across the group. Similarly to situations in which an accident victim needs help but bystanders fail to assist (i.e., each individual may assume that they do not have to call because someone else will call), officers may assume that others among their skilled and experienced colleagues would raise any relevant doubts. If a specific officer does not explicitly carry the responsibility to raise questions, it is likely that no officer will act, due to reasons

explored in nearly five decades of social psychology research about diffusion of responsibility. These general phenomena can be compounded by groupthink.

GROUPTHINK

The concept of groupthink is more than 45 years old and, although alternative conceptions of problems in group decision-making exist (see Baron, 2005; Hackman & Katz, 2010), social psychologist Irving Janis's notions of groupthink remain an illustrative way to describe some of the pitfalls of collective decision-making. Janis (1982) initiated his qualitative and historical research while feeling puzzled by the incompetent decisions made by teams of highly competent individuals, such as when President Kennedy and a team of advisors made the disastrous decision to launch the Bay of Pigs invasion. Scholars and textbook authors have since connected these pressures to other well-known poor decisions, such as the launch of the *Challenger* and the Iran-Contra scandal (Kramer, 1998).

Groupthink occurs "when the members' strivings for unanimity override their motivation to realistically appraise alternate courses of action" (Janis, 1982, p. 9). In situations that include groupthink, members muzzle their own doubts for the sake of group cohesiveness. Individual members often assume that they are the only ones with doubts, engaging in self-censorship of potential concerns and pressuring others to remain loyal to the group and its mission. This illusion of unanimity then persists, even as team members may nurture private doubts. These factors help observers understand apparently contradictory phenomena. For example, larger groups of skiers are more likely than small groups to make errors in avalanche country (Yin, 2016), and large groups of skiers sometimes make obvious mistakes even when the groups include multiple avalanche experts (see e.g., CBS Denver, 2014). The likelihood of groupthink increases in cohesive groups with individuals who are deeply committed to the group's important mission, as we would describe groups of investigators focused on solving an important crime. Like expert skiers facing potentially severe avalanche risks, officers must evaluate their own concerns, potentially about a suspect's innocence, alongside their perceptions of the group *and* their desire to remain a loyal member of the group. If expert skiers make evidently poor choices

while looking directly at lethal avalanche risk, then we should not expect police officers to be immune to these forces, particularly when they face additional factors, such as risks to professional evaluations, job security, and recognition from peers. These social factors increase the substantial difficulties faced by officers who may privately harbor doubts about a suspect's guilt. After all, officers do not retain their position as detective based on the number of suspects they eliminate from the crime of interest. Rather, they maintain their status by the number of suspects that are convicted (Wells & Leo, 2008).

These cognitive and social factors interfere with the abilities of police officers and others to evaluate confession evidence. All evaluations occur in cognitive and social contexts that increase the difficulties of these tasks. As we note throughout this book, it is not simply human biases toward confirmation instead of disconfirmation or the interaction of confirmation biases with social pressures involved in groupthink; these factors contribute to the totality of the circumstances that shapes all perceptions of and decisions about confession evidence. In addition to these cognitive and social concerns, other factors interfere with corroboration of confessions. In particular, confessions are so powerful that they influence the evidence used to corroborate them, rendering independent corroboration of confession evidence difficult at best.

Impacts of a Confession on Other Evidence

Psychologists Lisa E. Hasel and Saul M. Kassin (2009) staged a mock crime and asked observers to identify the suspect in a simultaneous lineup (i.e., a lineup in which all suspects are seen together) that did not include the actual perpetrator. Two days later, researchers invited participants to return to the lab to discuss their identifications with the researchers, who claimed that they were still trying to solve the crime. The researchers provided participants with confession information and invited participants to reconsider their eyewitness identifications. For participants who were told that the individual they identified confessed, only 2.44% changed their identification. For those participants who identified a suspect and were informed that a different suspect confessed, 61% changed their identification, and *all* of these participants selected the incorrect target that they were told had confessed, which

Hasel and Kassin (2009) call "astonishing" (p. 124). For participants who had initially decided—correctly—not to identify a suspect, being told by experimenters that a specific suspect confessed led 50% of them to erroneously identify the innocent suspect who supposedly confessed. Confession evidence shaped eyewitness identification.

For this and similar studies, the ethical and procedural limits of the experimental setting limit the application of the research. In this study, however, these limitations may have made eyewitnesses, if anything, *more* likely to be accurate. The crime was nonviolent and would not likely cause excessive arousal, the participants were (unlike many witnesses to actual crimes) presumably sober and attending to the crime itself, and the participants had met scholastic standards for admission and retention at universities. Despite these and other eyewitness advantages, confession evidence powerfully shaped participants' recall. Despite legal and commonsense assumptions, participants' eyewitness identifications were not independent of the confession evidence. Rather, the additional confession evidence may have encouraged participants to distrust their prior memory of the possible suspect and increased their suggestibility to new information. As described earlier, psychologist Gisli Gudjonsson and forensic psychiatrist James MacKeith (1982) have applied this concept of memory distrust syndrome to explain coerced-internalized confessions but, combined with the weight that observers give to confessions, it could also explain why participants changed their identifications (Gudjonsson, 2017).

Unfortunately, the impacts of confession evidence on other presumably independent evidence are not limited to lay individuals' observations. Confession evidence even affects experts. Forensic researchers Itiel Dror and David Charlton (2006) found that the outcomes of analyses by fingerprint experts reflected information about confessions, even in their sample of six experts, each of whom had specialized training, national certification, clear proficiency, and more than five years of experience. Dror and Charlton (2006) accessed prints that each expert had previously evaluated and then asked these experts to evaluate these prints in either a control condition (i.e., no confession information) or after being told that the suspect had either confessed to the crime or been in police custody at the time of the crime. They found that two thirds of their experts changed previous decisions and

that changes were more likely with fingerprints that were particularly difficult to match (see also Dror, Charlton, & Péron, 2006).

These concerns do not apply only to decisions of fingerprint experts. Scholars have extended these studies to include polygraph examiners, whose decisions remain sensitive to prior expectations about guilt, particularly when the physiological data are not conclusive (Elaad, Ginton, & Ben-Shakhar, 1994). Additionally, Jeff Kukucka and Saul M. Kassin (2014) found that confession shapes decisions of laypeople who evaluate handwriting samples. Perhaps most disturbingly, Dror and biologist Greg Hampikian (2011) claim that some decisions about DNA evidence remain subjective and therefore vulnerable to case information, particularly in complex cases or when DNA from multiple individuals may be in the sample in question (see also Thompson, 2006; Dror & Cole, 2010). Although they studied the biasing effects of complex case information (i.e., a plea deal in which a confessing suspect named accomplices), we expect confession information to have these effects more broadly, even with DNA, which is widely viewed as the best available evidence (Dror & Hampikian, 2011; Kassin & Neumann, 1997; Henkel, 2008).

Beyond these studies, the archival cases demonstrate the power of confessions to affect other evidence. In a review of DNA-exonerated false confessors, Kassin, Bogart, and Kerner (2012) found that a shocking two thirds of false confession cases included errors in forensic science, and approximately two thirds of these cases included other errors as well. Two important predictors for errors were the presence and the timing of a confession. Kassin and his colleagues (2012) found that the timelines of cases with multiple errors typically shared a common feature: a false confession preceded the errors.

As we see from the studies of the impacts of confession evidence on both experts and laypeople, a confession can lead to biases in analyses, which in turn can increase observers' confidence that they have the correct suspect, even when they do not. These biases may be particularly relevant in situations that are complex, including those with multiple possible perpetrators and suspects. The impacts on observers are exceedingly important because the forensic science falsely appears to provide independent corroboration of the confession (as required by *corpus delicti* or the trustworthiness standard). Across these studies and cases,

we see a consistent pattern: what appears to be independent evidence to corroborate a confession is not independent.

We can examine individual factors, interactions of factors, and the totality of the circumstances. Forensic errors occur in ways similar to errors in other scientific and legal endeavors, but forensic analyses remain vulnerable to these factors in ways that other scientific investigations do not. In science, blind testing protocols are standard, such that investigators do not know the origin, identity, or experimental manipulation applied to the samples. These practices emerged to prevent the motivations of scientists (i.e., motivated reasoners who want to be correct about their analyses) from intentionally or, more likely, unintentionally biasing their results (see Woody, 2017). For a legal example, many states, including Colorado, now require that eyewitness lineup administrators be blind to the identity of the actual suspect because *only* an administrator who is blind can adequately avoid providing cues to the eyewitness (Colorado, 2016; Wells et al., 1998). There exists other evidence for bias in forensic analysis. For example, in one sample, 26 of 28 FBI analysts made errors about microscopic hair analysis, overwhelmingly to support prosecutors' claims, and did so in more than 90% of cases, including 94% of death penalty cases (Cates, Dominguez, Pierce, & Kortan, 2015). The totality of the circumstances, including error-prone microscopic hair evidence, hair-testing procedures that are not blind, pro-prosecution biases of FBI investigators, and other factors, threatens the independence of the forensic science (National Academy of Sciences, 2009). Forensic analysts who know whether specific suspects have confessed introduce substantial risks to their evaluations of evidence, particularly for evidence that police, district attorneys, jurors, judges, and appellate courts expect to provide independent corroboration or disconfirmation of a confession.

Throughout this chapter, we have revealed ways that human thinking biases, social factors, and the impacts of the confession on other evidence lead to "corroboration inflation" (Kassin, 2012, p. 440). The evidence *appears* to independently corroborate the confession, even when it does not, and these perceptions persist through the investigation, pretrial hearings, and the trial and extend into and beyond legal appeals. These factors that interfere with attempts to corroborate the confession are further complicated by contamination and formatting.

Contamination and Formatting

Contamination

Contamination of a confession occurs when a false confession includes knowledge that only the perpetrator and the police know (Garrett, 2010, 2015). In these situations, the police or others unknowingly or erroneously provide the suspect with information about the crime, and the suspect incorporates this information into their false confession. The suspect's false confession then closely mirrors what the police know about evidence during the interrogation, and the strong fit of the confession to the evidence makes the confession compelling to observers, even if false. This "misleading specialized knowledge" (Leo, 2008, p. 254) can powerfully affect observers on the way to trial and then afterward.

Bruce Godschalk confessed to two sexual assaults, and his confession included graphic details that would be extremely unlikely for an observer to guess (see Leo et al., 2013). For example, he knew where and what one of the sexual assault survivors had been reading at the time of the attack, what a survivor was wearing, and multiple other details known only to the perpetrator and the police interrogators. The police interrogators and others denied providing any of this information to Godschalk. At trial, the district attorney argued that because officers did not provide this information and that, because it would be a statistical "impossibility" for Godschalk to guess so many correct details (as quoted in Leo et al., 2013, p. 764), the jury should find Godschalk guilty, which they did in 1987. Although DNA testing conclusively cleared Godschalk, the district attorney remained convinced of his guilt, even 15 years after the trial as Godschalk left prison after DNA exoneration (Stroh & Vigoda, 2002). The factors that make false confessions difficult to detect can influence observers' views for years.

Contamination has long been recognized as an obstacle to accurate corroboration, and police interrogators have long been warned to avoid providing crime details to suspects for these reasons. For example, Kidd (1943) admonishes police interrogators to let the suspect talk and warns about "alleged interrogators [who] proceed to tell the suspect most of the known facts" (p. 69). Inbau and Reid (1967) warned police about the dangers of revealing evidence to suspects, and later manuals continue these recommendations (e.g., Jayne & Buckley 2017; Inbau et al., 2013).

Garrett's (2010) review of false confession cases in the Innocence Project files demonstrated that contamination is nearly universal (see Garrett, 2015). Of the 38 individuals in his sample, 36 confessed to details known only to the police and to the perpetrator, despite not being the perpetrator (Garrett, 2010).

How could these innocent individuals know the crime details despite not being the perpetrator? There are multiple sources of potential contamination, including other inmates in jail, erroneously publicized crime facts (i.e., when police attempt to hide crime details that are unknowingly leaked to the press or otherwise published), other associates related to the crime, and other, harder to imagine sources.[4] Despite these other possibilities, Garrett (2010) argues that police interrogators are the most likely source of the contamination.

Experiences of police interrogators support this claim. Interrogation reformer and retired detective Jim Trainum (2007) and his partner interrogated a woman who confessed. The suspect's confession fit the evidence, and, as Trainum (2007) stated, "even the defendant's defense attorney believed she was guilty because of her confession" (¶6). But Trainum and his partner completed their due diligence and evaluated the suspect's alibi, a critical step required to evaluate confession evidence. To everyone's surprise, her alibi was "ironclad" (¶6). Trainum gained further insight into this case only years later, when he and his partner discovered something unexpected. At the time of the interrogation, his department did not typically record interrogations, but he and his partner had recorded *this* interrogation. More importantly, they recorded the questioning in its entirety. While observing the videorecording years later, when the suspect's innocence was clearly established, Trainum and his partner made a shocking discovery. They had avoided providing evidence to the suspect that could contaminate the confession—or so they thought. From their later perspective, knowing the suspect's innocence, they could observe themselves showing the evidence to the suspect—the evidence that later showed up in the suspect's confession and made the confession nearly undoubtable until compared with the suspect's alibi.

Despite their contamination of the confession, Trainum and his partner believed they had not done so until they observed the videorecording. This phenomenon (i.e., detectives who do not recognize

contamination as it occurs) appears throughout the false confession literature. For example, Garrett (2010) found that in 27 of the 38 cases in his sample the police detectives provided sworn statements that they had *not* provided crime details to the false confessor. Officers appear likely to fail to recognize contamination, sometimes even as they engage in contamination. The confidence that officers must have to move from interview to interrogation also drives these phenomena. Because officers must be highly confident in a suspect's guilt to move to interrogation, they may view the risk of contamination as low because they believe the likelihood of the suspect's innocence is similarly low.

In the Norfolk Four case, Danial Williams had initially confessed to murdering Michelle Moore-Bosko with repeated kicks to the head, and detectives accepted his false confession as a true claim. During a break in Williams's interrogation, however, Detective Evans talked to the medical examiner and learned that Michelle Moore-Bosko had been stabbed rather than kicked. Detective Evans then returned to the interrogation room and contaminated Williams's confession by confronting him with evidence from the autopsy and accusing him of lying about the method of homicide. Rather than question the veracity of his confession, Evans saw the incorrect details of his initial false confession as Williams's attempt to get away with murder (Wells & Leo, 2008). Her "correction" of Williams contaminated the interrogation. Williams then brought his confession in line with the evidence provided by Evans, providing misleading specialized knowledge and substantially increasing the difficulties in identifying his confession as false.

Although some observers may ask whether detectives knowingly and intentionally lied about whether they contaminated the interrogation or knowingly and intentionally sought the conviction of a suspect they knew or believed to be innocent, Garrett (2010) avoids these questions. He states, "this Article does not reach any conclusions regarding the state of mind of officers" (p. 1074; see also p. 1079). We take a stronger position. Although in this book we discuss some intentional illegal behavior by police officers (see e.g., *State v. Kofoed*, 2012), we argue that a substantial number of false confessions to law enforcement officers in the United States result from errors rather than misconduct.

Regardless of the intentions of officers, contaminated confessions are extremely difficult to detect. Detection requires a complete

video-recording, which is necessary but not sufficient. In his 2010 review, Garrett found that 22 of the 38 false confessions in his sample were video-recorded, but this record did not prevent false confessions, acceptance of the confessions by police, district attorneys, and others, and convictions at trial. The attempt to corroborate or otherwise evaluate confession evidence is further complicated by formatting.

Formatting

Leo and colleagues (2013) argue that formatting increases the perceived truthfulness of contaminated false confessions. Beyond simply providing details, police interrogators may "format a suspect's postadmission narrative by suggesting how and why the crime occurred, providing possible motives and plausible explanations, correcting, suggesting and filling in missing crime-relevant information, and directing the suspect to . . . conclusions about his alleged actions and the events of the crime" (Leo et al., 2013, p. 776). In this way, false confessions fit the evidence the police had at the time of the interrogation, sometimes even changing *as* officers learn more about evidence, as in the Norfolk Four example above. Officers seeking a fit between the confession and the known evidence may guide the suspect's confession to fit police expectations. As Garrett (2010) stated, "These officers most likely believed they were interrogating a guilty person" (p. 1074). Particularly with the well-documented guilty bias of police (Meissner & Kassin, 2002), an officer who believes a suspect is guilty may view a discrepancy between the evidence and the suspect's (false) confession as the result of the suspect's lies rather than the suspect's innocence, as Detective Evans did with Williams. The officer may then reject the suspect's denials and continue to demand "the truth" until the confession fits the evidence. In this way, similar to true confessions, false confessions can become rich with correct details as well as with sensory and emotional details that fit the known evidence. As Appleby et al. (2013) revealed in an analysis of proven false confessions, "most are richly detailed statements complete with descriptions of the what, how, and why the crime was committed" (p. 116). These effects of formatting make false confessions far more likely to be corroborated with evidence that appears independent, assuming, likely incorrectly, that police did not inform the suspect about crime details. These issues

do not stop with the interrogation. Confessions that are rich in detail are particularly inspiring for jurors and lead to higher conviction rates than confessions with less detail (Appleby et al., 2013).

With formatting, false confessions then fit the timeline police have developed for the crime as well as any existing physical evidence and hypotheses about motives. Perhaps surprisingly, the motives and emotions that suspects report in false confessions typically fit the crime. How can self-reported thoughts, emotions, and motivations of innocent suspects match police expectations? Formatting helps explain these phenomena. Because police often suggest interrogation themes that may justify the crime and fit officers' expectations about the perpetrator's motives, it is not surprising the scholars have found evidence for interrogation themes inside false confessions (Appleby et al., 2013). Similarly, 85% of false confessions included emotional and cognitive details that fit police expectations about the crime (Appleby et al., 2013) as well as sensory details. As demonstrated in the interrogation of Danial Williams, these details may include "errors" that the suspect "corrects" under the guidance of officers. These factors contribute substantially to the difficulties of separating true from false confessions from adults (Kassin et al., 2005) and from children (Honts et al., 2013). Formatting makes the confession rich in sensory, emotional, cognitive, and motivational detail and strongly fit to the known evidence. These factors increase the likelihood that the evidence will appear to independently corroborate a false confession.

Cognitive biases, social factors, and contamination and formatting dramatically increase the difficulties in corroborating a confession. The ways that humans think and interact limit observers' abilities to evaluate confession evidence accurately. These are not criticisms of police. As human cognitive and social decision makers, police and other observers face extremely difficult obstacles, and they face these obstacles in a particular legal context—the corroboration rules for their jurisdiction. In the final chapter, we provide recommendations for investigators and others to address these challenges.

Conclusions

As described at the start of this chapter, the personal, financial, and community costs of false confessions are dramatic, not only for the

erroneously convicted defendant but for others, including the community and the criminal justice system as a whole. For a multitude of reasons, false confessions themselves interfere with all attempts to corroborate them independently. We now turn to options to provide greater clarity to this process: expert testimony and other safeguards. We review the strengths and the limits of both of these general remedies, and then we conclude the book with final recommendations.

6

Expert Testimony

If you ever get a chance to meet Charles Honts, Ph.D., the first feature you might notice is his imposing presence. At 6'4" he towers over most of us. But would you also notice his dry sense of humor, his penchant for fly fishing, and his dedication to providing expert testimony for clients in need? Between 1983 and this writing, he has served as an expert witness 128 times in legal proceedings. This figure includes affidavits, depositions, evidentiary hearings (including both *Frye* and *Daubert* hearings), and suppression hearings as well as testifying in court for judges and juries. His expertise is related to polygraph use by law enforcement, the veracity of child witness recall, including the likelihood that they may lie, and interrogation techniques that can lead to false confessions.

Honts became interested in polygraphs when he met a polygraph examiner who performed examinations for the company where Honts worked. (We will address admissibility to court subsequently.) He trained as an examiner and started working with his colleague, an examiner who performed pre-employment screenings, sometimes including polygraph examinations. After working in the private sector, Honts decided to return to school, and he earned a master's degree and a doctorate in psychology from Virginia Polytechnic Institute and State University and the University of Utah, respectively. As one of the few academics with polygraph certification (and the only one who was a polygraph examiner *before* becoming a scholar), Honts developed a unique perspective concerning the use of polygraph examinations by law enforcement. He began to notice that many individuals who had reported false confessions did so after a "failed" polygraph examination. Attorneys began seeking Honts's assistance in evaluating their clients' polygraph examinations. A question emerged. Was the polygraph examination being used to determine deception, or was it an interrogation tactic designed to elicit a confession?

Regardless of perceptions on the utility of the polygraph to detect deception (Raskin, Honts, & Kircher, 2014; National Research Council, 2003), the polygraph is extensively used in U.S. national security pre-employment screenings (e.g., by the Federal Bureau of Investigation and the Central Intelligence Agency). It is also widely used in law enforcement to determine whether a suspect is lying. The polygraph tests whether the examinee's responses to some questions differ from responses to others (for additional detail see Raskin, et al., 2014).

Agencies such as the American Polygraph Association (2018) have clearly defined procedures that serve as best practices for polygraph. One key recommendation is that the polygraph examiner not be the one who interrogates the suspect. As we have seen, the polygraph can serve as a powerful FEP. One of the first indicators that a polygraph examination is being used as an FEP is that the examination is conducted in a manner that fails to follow evidence-based best practice standards. Poorly worded questions with vague or undefined terms can lead to false positives. Immediate statements such as "You've failed the test" or "I know you are lying" without evaluating the recorded data also indicate an FEP. Although some law enforcement polygraph examiners may argue that the using the polygraph as an FEP inspires guilty but not innocent suspects to confess, Honts argues that it can also lead to false confessions.[1] According to Honts (2017), the interrogation technique most likely to lead to a false confession is an FEP, such as telling a suspect that he/she failed the polygraph when the results are inconclusive or indicated truthful. Orchestrated FEPs directly involve the suspect in the deception, leading them to feel hopeless and trapped, as is typical with orchestrated scientific FEPs such as the polygraph.

Serving as an expert witness can be time consuming and complex. Attorneys requesting Honts's assistance usually provide him with interrogation transcripts and, if available, video- or audio-recordings of the interrogation and charts of the test results. Like many expert witnesses (see Kassin, Redlich, Alcest, & Luke, 2018), Honts does not accept every case he reviews. Instead he reviews the materials and determines whether problem factors such as implied threats or promises, FEPs, suspect vulnerabilities such as age and IQ, or an extended interrogation time could have influenced the suspect. If there seem to be issues with the suspect's IQ or mental health, he often suggests to the attorney to

consider having an evaluation by a clinical psychologist. He also reviews the polygraph results to determine whether the suspect actually failed and whether the test appears to be conducted appropriately. Although Honts often serves as the only psychological witness, he has also testified with other distinguished experts (e.g., Saul M. Kassin, Richard A. Leo) in some groundbreaking cases (e.g., *State v. Free*, 2002; *People v. Kogut*, 2005; *People v. Rivera*, 2011).

Like many other expert witnesses, Honts became well known in his field by publishing research in peer-reviewed journals, presenting at national and international conferences, and training members of law enforcement around the world. His programmatic research is often cited by fellow academics as an unbiased approach to the polygraph.

In general, Honts loves the challenge of presenting balanced information about the field to educate judges and jurors alike. He also likes the occasional verbal sparring match that occurs during cross-examination. But it is important to note that testifying does not always go as planned. He may plan to be gone for a day but it often turns into two. He has testified for as long as 6 hours (*United States v. DeLorean*, 1983) and has worked with poorly prepared attorneys. He believes that he can do a much better job of providing information to the court if he is allowed the time and the resources to prepare reports and work with counsel beforehand. One of his frustrations comes when he writes his report and then waits months or even years to testify in court. And yet, he has no plans to stop testifying anytime soon. "Being an expert witness is extremely important. The average person believes they would never make a false confession. Yet the average person can and will make false confessions. Jurors need to know that."

Expert testimony from social science was rare and controversial as late as the mid-1980s, but, as Monahan and Walker (2011) note, through recent decades, expert testimony about social science has become commonplace and widely accepted. Their well-known casebook (Monahan & Walker, 2017), now in its seventh edition, guides readers from psychological science and law through the complex courtroom interactions of these disciplines.

Expert testimony about interrogation and confession continues to educate jurors and judges (Kassin et al., 2018; Kassin, 2008). In this chapter, we review forensic testimony from clinical psychologists or other

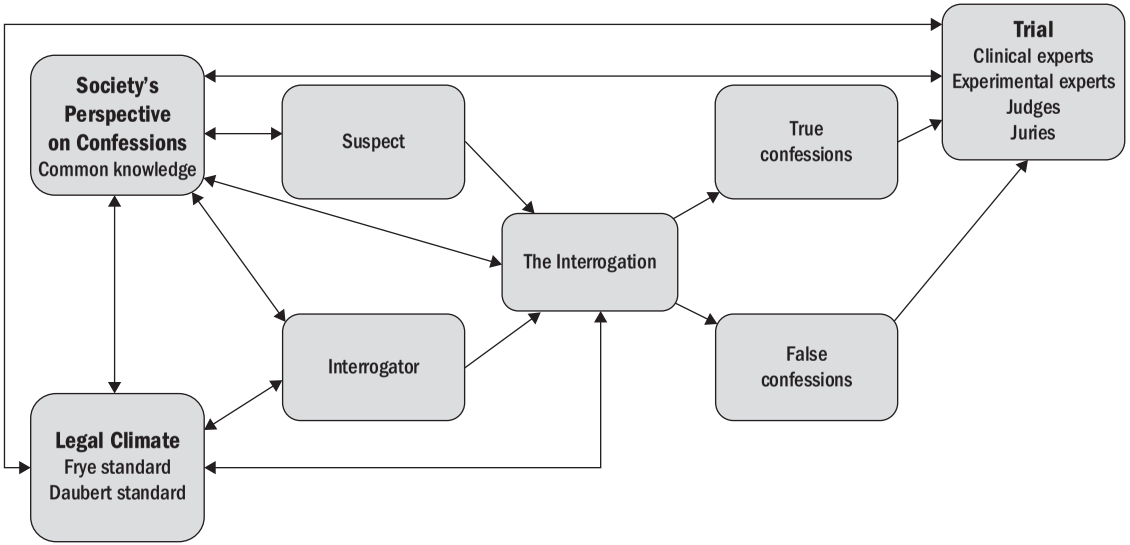

Figure 6.1. The Totality of the Circumstances Surrounding Expert Testimony and Triers of Fact

practitioners as well as social and cognitive testimony from researchers. We examine potential roles for experts, the legal guidelines that shape expert testimony, and topics for clinical and other scholarly expert testimony. Next, we review the admission of experts to legal proceedings, including suppression hearings and trials, and we discuss ongoing challenges to the admission of expert testimony at trial. We conclude the chapter with a short review of the impacts of expert testimony on legal decision makers; we return to this topic more thoroughly in the next chapter.

As Figure 6 illustrates, there is a complex relationship between society's perspectives of confessions and the general legal climate. Specifically, media coverage affects judges, jurors, suspects, police officers, and other observers by framing their expectations for trial and by shaping their views of the larger legal system. There may not be enough information in the media for false confessions to be considered common knowledge, although this may be changing (Mindthoff et al., 2018). As Honts indicated, jurors generally still do not understand the power of police interrogation techniques, nor do they believe they would succumb to those techniques.

The role of experts in the legal system depends on the case, the attorneys, an expert's willingness to assist, legal parameters, and the inclination of triers of fact to consider the expert's testimony. Typically, attorneys seek experts and provide case materials for review so the expert can decide whether to accept the case. If experts agree to testify and if attorneys seek to bring an expert to trial, this typically starts with an admissibility hearing for the expert—typically a *Daubert* or *Frye* hearing. Judges follow federal or state legal standards to admit or exclude expert testimony at trial, as discussed below. If the expert is admitted, the expert may testify at a suppression hearing. In a suppression hearing, the question is whether the confession is voluntary and therefore admissible at trial. Judges rely on preponderance of evidence as the standard for admitting a confession at trial (Pepson & Sharifi, 2010), and we review the implications of the standard in subsequent chapters. Finally, if the confession is admitted at trial and the expert is allowed, the expert will then testify at trial. These steps can happen in the same day, or decisions can be made days, weeks, or months before the trial itself.

Roles of Experts

Expert scientific testimony entered common law in Europe in the 17th century, alongside the emergence of science in Western culture (Kargon, 1986). In U.S. law, some scholars view Münsterberg's writings as foundational for the emergence of expert testimony in psychology (Kargon, 1986), particularly in the early 1900s, as he wrote several popular articles critical of the criminal justice system in the United States, culminating in *On the Witness Stand* (1908). Münsterberg argued that psychological science should reach into many fields, such as the military, business, and politics. He seized a particularly public opportunity to infuse psychological science into the legal system when he wrote about a potential false confession case in Chicago. As we saw earlier, he faced substantial resistance from attorneys and courts (Woody, 2016), similar to what psychological experts sometimes face today.

Experts have wide latitude in their decisions to testify, but limits to their testimony also exist. As noted previously and discussed more thoroughly below, experts may testify to a wide range of scientific knowledge. Fundamentally, despite being retained and paid by one side, experts must remain impartial (Kassin et al., 2018). In addition to these guidelines, experts must not invade the province of the trier of fact (i.e., typically the jury). Therefore, when testifying about confessions, experts generally cannot make any statements about the truth of the confession. Any such statement, which inherently involves questions of guilt and verdict, could comprise ultimate opinion testimony and must be left for the jury. Current psychological experts in these fields appear well aware of these requirements (Kassin et al., 2018). Additionally, reviewing materials does not guarantee that an expert will testify. Experts surveyed in a recent study indicated that they had turned down almost half of all self-reported requests for testimony (Kassin, et al., 2018).

How should experts navigate these requirements for impartiality? Saks (1992) described three general roles for experts. First, Saks (1992) described the *conduit-educator* role. Experts choosing this role educate the court about their scientific or technical field as thoroughly and impartially as possible. Second, Saks (1992) described the *philosopher-ruler*, with the terminology drawn from Plato (1961). In this role, the experts present their fields in ways that emphasize their perspectives

(or the perspectives of the side who hired them) in court, potentially "de-emphasiz[ing] or omit[ing] flaws in the data, or refrain[ing] from discussing opposing evidence" (Saks, 1992, p. 190). Experts may also choose the *hired gun* role, in which they select to present or obscure scientific knowledge or do nearly anything else with the primary goal of helping the attorneys who hired them win the case. These hired gun approaches have led to extensive backlash against experts (Hagen, 1997; Turner, 2006). When scholars asked a large sample of psychological experts in interrogation and confession about the roles they choose, *all* of the experts stated that they choose the educational role (Kassin et al., 2018).[2] Despite this widespread agreement, concerns persist about the impartiality of experts. We now turn to the general scientific findings to which experts testify.

Clinical and Experimental Experts

Clinical Experts

Clinical psychologists and others who evaluate and treat people with psychological disorders (e.g., master's-level therapists, clinical social workers, clinical forensic psychologists) may testify in court about a defendant. Unlike the social and cognitive scholarship about which experimental experts typically testify (discussed below), clinical practitioners typically evaluate the defendant and then seek to educate the court about the defendant's vulnerability to social influence and about other trait and state factors that may increase the likelihood of false confessions. Psychiatrists Peter Quintieri and Kenneth Weiss (2005) argue that because courts typically require a clear connection between expert testimony and the defendant, clinical testimony is more likely than experimental testimony to be admitted in court (see also Weiss, 2003). For some of these factors, particularly trait factors, clinical experts must meet, assess, and draw conclusions about the defendant. Here we review these factors.

Trait Vulnerability

As discussed earlier, trait vulnerability in suspects (i.e., enduring vulnerability about long-term characteristics of suspects) rests on many

factors. A widely recognized vulnerability is the age of the suspect. As we have seen, children are fundamentally different under the law. Developmental scholarship has revealed that, compared to adults, children are more likely to engage in risky behavior, have limited self-regulation, and focus on rewards while being less likely to consider future consequences (see Steinberg, 2017). These differences lead to greater risks of false confession for children. Additional justification comes from experimental scholarship with adults and juveniles (e.g., Redlich & Goodman, 2003) as well as from archival cases (National Registration of Exonerations, 2018). Experts in human development may educate courts about these differences, particularly the emerging neuroscience that has been so influential for the U.S. Supreme Court and other courts (Steinberg, 2017).

Intelligence is another central trait factor, including suspects who have low intelligence and those with cognitive disabilities. Clinical experts may use widely accepted intelligence tests (e.g., the Wechsler Adult Intelligence Scale-IV) to evaluate the suspects (Weiss, 2003) and then educate the court. Suspects with lower IQs or cognitive disabilities are particularly vulnerable, for reasons that include but are not limited to difficulties in the comprehension of *Miranda* warnings, difficulties understanding the consequences of the decision to submit to interrogation or to confess, and increased suggestibility, as discussed subsequently. These defendants require a qualified and experienced psychological assessor to demonstrate their intellectual vulnerability to the court. A recent study of psychological experts in interrogation and confession revealed that 95% of experts believed these claims were reliable enough to merit expert testimony (Kassin et al., 2018).

Clinical experts can also evaluate the defendant for the presence of diagnosable psychological disorders. As discussed previously, several psychological conditions raise important concerns, particularly the distortions in thinking, perception, and social interactions that emerge when people struggle with psychosis (Weiss, 2003). In addition to suspects with these substantial disorders, experts may educate the court about the vulnerability of suspects who are depressed or anxious, particularly if the symptoms of these disorders are extreme. As we have seen, people with autism spectrum disorder (ASD) face risks in the interrogation room, particularly for those individuals with ASD who may

struggle to comprehend instructions and to interact socially. Clinical psychologists can also testify concerning the extent to which psychological disorders can influence behavior in stressful situations. Unfortunately, police interrogators are often unable to recognize psychological vulnerabilities such as mental illness or mental impairments when questioning suspects (Gudjonsson, 2010; Herrington & Roberts, 2012; Redlich, 2004). In our final chapter, we make specific recommendations to support officers who must navigate these difficult situations.

Earlier, we discussed interrogative suggestibility as a psychological vulnerability (Gudjonsson 2013; Gudjonsson, 2003; Drake, 2010). If clinical experts evaluate a suspect, they may use the Gudjonsson Suggestibility Scales and then present findings to the court about the suspect's suggestibility as well as the suspect's trait vulnerabilities that may interact with suggestibility.

State Vulnerability

Experts may also testify about temporary factors that increase a suspect's vulnerability to false confession. As we have seen, these can include intoxication, withdrawal, fatigue, chronic pain, and other factors (Weiss, 2003). As with trait vulnerability, clinical experts must assess the defendant and then prepare to educate the court about these factors. These may present additional challenges due to their transitory nature. For example, a defendant who is exhausted or intoxicated during interrogation may be well-rested and sober during the psychological assessment.

Across both trait and state vulnerability, clinical experts should prepare to educate the court about the totality of the circumstances related to the defendant. As we have emphasized throughout this book, these include individual trait and state factors (e.g., low intelligence and suggestibility as well as fatigue and withdrawal, respectively) as well as interactions between these factors (e.g., *Sanchez v. Hartley*, 2016; Sanchez has a cognitive disability and was extremely fatigued). Beyond these interactions, we also encourage experts, the attorneys who seek and retain them, and the courts in which they testify to provide and seek input about the totality of the circumstances. How do vulnerable suspects face deception? How confidently did police interrogators embrace a suspect's guilt because of or despite the suspect's intoxication, mental

illness, and/or cognitive disability? The totality of the circumstances also reaches beyond the individual suspect to external factors largely unknown to jurors and other observers.

Experimental Experts

We use the term *experimental experts* in deference to historical perspectives in psychology that would group both social and cognitive scholars, who may be potential experts, under the general heading of experimental psychology (Woody & Viney, 2017). In this review, we do not separate social and cognitive subfields of psychology, nor do we omit those who call themselves scholars of social cognition or of other related fields such as sociology or criminal justice. We also recognize that the clinical experts described previously may also engage in experimental research or other scholarship. We use *experimental expert* as an umbrella term for those who are primarily researchers rather than psychological practitioners and who do not have or choose not to employ clinical skills in their expert testimony. These scholars educate courts about scientific knowledge related to interrogation and confession.

Kassin (2008) provides a three-level pyramidal framework for expert testimony about the psychological science of interrogation and confession that also includes research in related areas. More than 120 years of basic psychological science provides the foundation of the pyramid. These include experimental studies of social influence, obedience, memory (including misinformation effects and other errors in memory), and applied cognition, as well as many applied studies on these topics that extend outside of the laboratory. These studies are generally separate from applied research in interrogation and confession, and laboratory settings typically maximize internal validity (Kassin, 2008; Wilson, Aronson, & Carlsmith, 2010). For example, although Stanley Milgram's well-known studies of obedience (Milgram, 1963, 1974/2004) do not tie directly to interrogation, his findings strongly suggest that typical people are likely to engage in destructive behavior when ordered to do so by a legitimate authority. (It is important to note that Milgram's studies have long been questioned for ethical reasons—see Baumrind, 1964, 2013, 2015 for reviews concerning participant stress as well as other purported ethical violations). These basic research findings provide support

for claims that suspects may engage in behaviors with negative consequences (e.g., confessing falsely) when ordered to do so by legitimate authorities such as police officers.

The peak of the pyramid suggested by Kassin (2008) is occupied by known false confession cases, which, as discussed below, are now largely immune to doubt. Between the foundation and the peak, we find applied studies of interrogation and confession. These studies rest on the larger foundation of basic research and provide the connections between the findings from basic scholarship and the counterintuitive yet clearly demonstrated false confessions at the top (see Kassin, 2008, 2017a). As discussed earlier, however, these studies bring their own strengths and shortcomings, which appear to require input from an expert to explain adequately. For example, even if some courts have argued that laypeople have knowledge of interrogation and confession (we review these claims below), reading experimental psychology and related fields, with complex research designs, multivariate statistics, and scientific, theoretical, and applied implications, can raise challenges not only for laypeople but for scientific experts who conduct scholarship outside of these areas. These studies can most directly illuminate the factors that have been associated with the increased likelihood of false confessions, and scholars can educate the court about these factors.

We now turn to whether courts should admit testimony by clinical and experimental experts and, if so, on what grounds. We also review historical and ongoing challenges to admissibility. Then we evaluate the impacts of expert testimony on triers of fact (i.e., jurors in a jury trial and judges in a bench trial) before concluding with an examination of the totality of the circumstances.

Admissibility of Expert Testimony

Generally speaking, courts can admit expert testimony under specific conditions. First, the expert's testimony must be outside "the range of common knowledge or common experience" such that typical people would struggle to understand the phenomenon (*Frye v. United States*, 1923, p. 1015; Chojnacki et al., 2008). As we note below, this criterion has been used to challenge the expert witnesses' testimony about

interrogation and confession. Courts have varied in their evaluations of whether the factors that lead to false confessions are within the purview of common knowledge. Fundamentally, the expert's testimony must assist the court, particularly the trier of fact, in understanding the questions before the court (Chojnacki et al., 2008; Wingate & Thornton, 2004). In addition to these considerations, Federal Rule of Evidence 403 specifies the conditions under which evidence may be excluded. If the expert's testimony may introduce bias or prejudice to the jury or if it confuses or misleads the jury in ways that substantially outweigh the probative value of the testimony (i.e., the value of the testimony for providing evidence about facts that assist the jury or judge in trial decisions), then courts may reject the testimony (Wingate & Thornton, 2004; see the First Federal Circuit case *United States v. Shay*, 1995).

In addition to these general criteria, jurisdictions vary regarding the standards used to evaluate and admit expert testimony. Most states use the *Frye* standard or the *Daubert* standard, which applies in federal cases (Cutler, Findley, & Loney, 2014). We now briefly examine these standards, even though these different standards do not lead to substantial differences in the outcomes of hearings about the admissibility of expert testimony (Cheng & Yoon, 2005).

The Frye Standard

The Frye standard for the admission of expert testimony was established in 1923 with *Frye v. United States*, a case involving a disputed confession. Frye faced accusations of the murder, and despite the lack of physical evidence connecting him to the crime, he confessed during police questioning (Weiss, Watson, & Xuan, 2014). He then recanted his confession, claiming that he confessed so that he could divide the $1000 reward offered by the victim's family with the detective to whom he confessed (Weiss et al., 2014). Frye also offered an alibi that could not be corroborated, leaving the court with only Frye's confession. In an attempt to demonstrate that his confession was false, Frye's attorneys recruited William Marston, a psychologist who had worked with Hugo Münsterberg at Harvard (Woody, 2016) and who sought to promote his newly developed systolic blood pressure deception test, an early lie detection

machine. Marston agreed to evaluate Frye's confession free of charge (Weiss et al., 2014). As Marston exclaimed after the evaluation, "No one could have been more surprised than myself to find that Frye's final story of innocence was entirely truthful" (Marston, 1938, p. 71). Frye's attorneys then sought to have Marston's testimony admitted at trial.

Would the trial court admit Marston as an expert? The question at issue before the court was whether expert testimony about outcomes from his early lie detection machine were admissible. The trial court rejected Marston's testimony, Frye was convicted, and the District of Columbia Court of Appeals upheld the trial court's decision (*Frye v. United States*, 1923). Frye continued to maintain his innocence through nearly 18 years in prison. This decision also had a series of larger ramifications. First, as noted by Weiss et al. (2014), this decision largely sealed the fate of polygraph evidence in courtrooms, with most states rejecting its inclusion under any conditions, some states admitting polygraph evidence if both sides agree, and only New Mexico routinely admitting polygraph evidence directly to court. Second, the appeals court issued what Weiss et al. (2014) describe as a "maddeningly terse two-page opinion" (p. 226) that established what is now called the *Frye* standard for admissibility of expert testimony: "an expert's testimony is admissible to the extent that it is generally accepted within the relevant scientific community" (Kassin et al., 2018, p. 66). Below, we return to courts' uses of this criterion in cases involving disputed confessions.

The Daubert Standard

The U.S. Supreme Court ruling in *Daubert v. Merrill Dow Pharmaceuticals, Inc.* (1993) moved federal courts away from the *Frye* standard and changed the legal landscape for expert testimony. As of this writing, eight states continue to use the *Frye* standard, three use their own standards to admit experts, and the remaining states use *Daubert* or variations on *Daubert* (Kassin et al., 2018). In *Daubert*, the U. S. Supreme Court held that Federal Rule of Evidence 702, which defines expert witness testimony, provided the foundation for expert testimony, superseding the *Frye* standard in federal court cases, and the Court designated judges as the gatekeepers for expert testimony in their courtrooms (Wingate & Thornton, 2004).

In *Daubert*, the Court stated that there is not a "definitive checklist" (pp. 592–593) of criteria for the admission of expert testimony but presented four general criteria for judges to use when considering the admission of scientific, technical, or other specialized expert testimony. First, is the expert's theory testable, and has it been tested? Second, have the theories and claims of the expert been subject to peer review and publication? Briefly, peer review is the mechanism by which studies are published in scientific journals. In this process, scientific authors send their research papers to journals, which then send the papers to expert scholars in the field. These experts are typically scholars who have published in areas similar to the manuscript under review. These experts may recommend that the journal reject or accept the paper, or, if the paper appears to be strong but not acceptable in its initial form, the reviewers may request that the journal reject the paper but invite the authors to resubmit the paper with revisions. These expert reviewers, who typically do not know the authors' identities and whose identities are typically unknown to the authors, and journal editors carry the responsibility to promote the publication of strong scientific papers and to reject insufficient papers. Third, what is the known or potential error rate for the expert's claims? In other words, are the expert's claims reliable enough to aid the tier of fact? Finally, are the expert's claims generally accepted by the relevant scientific community? This final criterion is nearly identical to the *Frye* standard. Does expert testimony about interrogation and confession meet these standards?

Challenges to Admissibility

Common Knowledge?

What do typical jurors and other laypeople know about interrogation and confession? We investigate this question more deeply later and therefore here only briefly examine these issues as related to admissibility of expert testimony. As noted by forensic psychologist Solomon M. Fulero (2010a), some courts have argued that expert testimony about interrogation and confession would include only material that "was not beyond the common knowledge of laypersons" (p. 205; see also Fulero, 2010b). For example, in *People v. Bennett* (2007), the trial court excluded expert testimony about a defendant's vulnerability without an

admissibility hearing for the expert, and the Illinois Appellate Court upheld the conviction. Similarly, other courts have disallowed expert testimony on these grounds (see Chojnacki et al., 2008; see *State v. Davis*, 2000; *People v. Polk*, 2010; *United States v. Belyea*, 2005, for examples from the Missouri Court of Appeals, the Illinois Court of Appeals, and the Fourth Circuit Court, respectively). As discussed subsequently, some empirical support exists for this perspective (Woestehoff & Meissner, 2016).

Despite these rulings, there are important concerns about jurors' knowledge. Kassin (2008) notes that common knowledge leads observers to believe confessions and that observers are poor at deception detection, even when they may mistakenly believe they could distinguish between true and false confessions. False confessions appear genuinely counterintuitive (Kassin, 2017a), and a recent survey of experts revealed that they share doubts about jurors' knowledge (Kassin et al., 2018). Additionally, several studies have demonstrated that jurors do *not* know much about police interrogation and confession. Law scholar Richard A. Leo and psychologist Britanny Liu (2009) found that jury-eligible university students distinguished coercive interrogation tactics from less coercive tactics but believed that coercive tactics would lead to true but not false confessions. Researchers Iris Blandón-Gitlin, Kathryn Sperry, and Leo (2011) replicated and extended these findings with a sample of actual jurors as well as a sample of jury-eligible students (see also Henkel, Coffman, & Dailey, 2008; Forrest, White, & Fulero, 2010). Additionally, jurors have limited abilities to evaluate interrogation strategies. Forrest et al. (2012) found that participants who read a list of interrogation tactics rated these tactics as less deceptive and coercive than did a sample who read the same interrogation tactics embedded in realistic trial transcripts, demonstrating that jurors do not accurately imagine or evaluate interrogation tactics from a list.

Some courts have recognized these limitations of jurors. For example, the Seventh Circuit Court of Appeals reversed a defendant's conviction after ruling that the trial court erred in excluding expert testimony, despite the claims at trial that the expert's testimony included knowledge already available to jurors (*United States v. Hall*, 1996). The Seventh Circuit Court ruled that if the expert testimony meets the criteria of *Daubert* and would assist the trier of fact, then the court can admit the

expert even if some of the expert's testimony is known to laypeople. The court ordered a new trial with a *Daubert* hearing to evaluate the admissibility of expert testimony, after which the expert's testimony was admitted at trial (*United States v. Hall*, 1997). Similarly, a judge in the trial of John Kogut noted that laypeople may have some knowledge of police interrogation but would still benefit from the testimony of an expert (see Kassin, 2008). After a review of the literature and their own study of jury-eligible adults, Chojnacki et al. (2008) concluded that "at best, most individuals do not know what experts know about false confessions and, at worst, hold serious misconceptions that might infringe on a defendant's right to receive a fair trial" (p. 39). These findings establish the lack of accurate lay knowledge about interrogation and confession and clearly point to the need for expert testimony to educate triers of fact (see also Kassin, 2012).

Prejudice?

Some courts have raised concerns that the prejudicial impact of expert testimony could outweigh the probative value of the testimony. For example, the Tenth Circuit Court raised several concerns about a particular psychological expert in a disputed confession case, including the concern that jurors would give excessive weight to the scientific testimony simply due to its scientific nature (*United States v. Adams*, 2001). The findings from studies of jurors' knowledge of police interrogation and confession, however, suggest that the risks of excessive prejudice pale in comparison to the probative value inherent in addressing jurors' lack of accurate knowledge and their dangerous misconceptions.

Frye and Daubert

What challenges to the admission of expert testimony at trial emerge from the *Frye* and *Daubert* standards? Rather than discuss these as separate standards, we evaluate *Daubert* and consider *Frye* admissibility below because it mirrors the fourth *Daubert* criterion: acceptance in the general scientific community. As gatekeepers, judges face expectations to use *Daubert* criteria to evaluate proffered testimony from experts and to decide whether an expert's planned testimony meets these criteria,

potentially in a stand-alone admissibility or *Daubert* hearing about the expert and their testimony. We briefly consider each *Daubert* criterion in turn.

First, have the claims of experts been tested? As psychological scholar Brian Cutler and colleagues (2014) state, "there is little room for argument about one thing: the theory at its most basic level—the simple but very counterintuitive notion that innocent people can be induced to confess to very serious crimes they did not commit—has indeed been tested" (p. 15). Even if law professor Paul Cassell (1999), among others, has raised questions about the factual innocence of some suspects in the larger body of false confession cases, DNA exonerations continue to provide strong evidence for the existence of false confessions (Kassin et al., 2010; Cutler et al., 2014; National Registry of Exonerations, 2018).

More specifically, as described earlier, scholars have employed several methods to test their claims about false confession. Clinical psychologists draw upon the breadth of scholarship about people with psychological disorders as well as the wealth of data regarding the uses of the GSS (Gudjonsson, 2003; Fulero, 2010a), including multiple peer-reviewed evaluations (for reviews, see e.g., Kassin et al., 2010; Leo, 2008; Woody et al., 2011). Similarly, as discussed previously, scholars who serve as experts draw upon more than a century of psychological science as well as the recent explosion of scientific research directed specifically at interrogation and confession. As we discussed previously, these scholarly endeavors include case studies of actual false confessions, correlational studies of self-reported false confessions, and controlled experimental studies of factors that increase the rates at which suspects falsely confess. Although these studies involve a wide range of methods and outcomes, the findings of the meta-analysis by Stewart et al. (2018) reinforce claims by Kassin (2008), who argued that this is "a research literature that is characterized by eclectic methods that have produced convergent results" (Kassin, 2008, p. 204). Earlier, we carefully explored the strengths and weaknesses of experimental and archival methods. Experts' claims in these areas have been tested extensively.

Second, have the claims of clinical and experimental experts been through peer review? This book cites extensive peer-reviewed references as well as court cases, book chapters (which are typically not peer-reviewed), books, websites, news materials, and other sources. As

is evident throughout this work and the accompanying references, as scholars, we prioritize strong peer-reviewed science as the foundation of our claims as well as the claims of clinical and experimental experts. As Kassin et al. (2018) argue, based on measures of selectivity and citation by other authors, the journals that have published these studies are selective and highly impactful in their fields. The breadth and depth of the peer-reviewed work in these areas reflects our goals as scholars as well as the larger body of scientific literature on these topics, particularly the recent explosion in scholarship in interrogation and confession (for reviews see Kassin, 2016; Kassin et al., 2018; Meissner, Surmon-Böhr, Oleszkiewicz, & Alison, 2017).

Third, what is the known or potential error rate? Previously in this chapter, we discussed Kassin's (2008) pyramidal framework for social and cognitive experts, starting with a base of psychological science, a top section of actual false confession cases, and a connecting middle area of applied studies to connect the psychological foundations to scholars' understanding of actual cases. Due to the ethical and other limits of experimental research, these experimental studies do not provide direct analogues for actual interrogations (see Stewart et al., 2018) but through their control of extraneous factors can reveal social, cognitive, and other factors that increase or decrease rates of true and/or false confessions (Narchet et al., 2011) .

This third criterion, the requirement to report a known or potential error rate, "does not apply neatly to this type of expert testimony" (Cutler et al., 2014, p. 17) and therefore presents potential difficulties to expert witnesses. There does not exist a comprehensive body of confession cases from which to derive a known error rate or false confession rate. Some estimates are low (e.g., 35 per year, Cassell, 1996), while others are higher (e.g., 600 per year in the United States, Huff, Rattner, & Sagarin, 1986). Additionally, many scholars (e.g., Kassin, 1997; Kassin & Gudjonsson, 2004; Leo & Ofshe, 1998, 2001; Woody et al., 2011) argue that it is impossible to estimate rates of false confession, and we concur with this reasoning. Identifying false confessions presents intense difficulties for reasons discussed throughout this book. Despite the array of false confession cases reported in psychological sources from Münsterberg (1908) to the present (Kassin, 2016), any estimate of frequency remains problematic. This is due in part to the thousands or potentially *millions*

of police interrogations from the emergence of civilian policing to the present and to the number of plea bargains made by false or coerced confessors to avoid trial (Redlich, 2010; Redlich et al., 2010).

These limitations present difficulties to experts. Experts must be ready to testify about the limitations of the larger data set—the monumental body of police interrogations conducted in the United States. These limitations include lack of knowledge of the ground truth for each defendant, evidence of guilt or innocence that is not independent of the confession itself, and myriad other difficulties. Additionally, because experts must avoid ultimate opinion testimony (i.e., they must not usurp the mission of the jury by stating whether a confession is true or false and, by extension, whether the defendant is guilty or innocent), they cannot apply an error rate to any claims about the defendant's guilt (Cutler et al., 2014). More commonly, experimental experts are likely to describe factors that increase false confession rates without making claims about any specific defendant.[3] Although the error rate remains unknowable, experts can testify about the existence of false confessions, the factors that make false confessions more or less likely, the error rates in experimental studies, and related findings beyond simple rates of false confession (Stewart et al., 2018).

The fourth criterion, acceptance by the relevant scientific community, is required by both *Frye* and *Daubert*. For the central question about the existence of false confessions, however, "No scholar on the subject debates whether false confessions exist" (Agar, 1999, p. 32). Beyond this foundational claim, additional detail is required to evaluate acceptance of the relevant community. A wide range of evidence exists. First, the research literature was sufficiently developed to support a white paper by the American Psychology-Law Society (Kassin et al., 2010), only the second white paper in its history. Second, the American Psychological Association, the largest organization of psychologists in the world, published a Resolution on Interrogations of Criminal Suspects (2014) with recommendations that support these claims. The APA also created and submitted six *amicus curiae* briefs to state supreme courts regarding false confessions, each of which presents claims based on accepted scholarship (see Kassin et al., 2018). Third, a recent study of 131 experts in the relevant scientific community (i.e., experts who held a doctoral degree in psychology or another related field and had published scholarship on

interrogation and confession in peer-reviewed journals) by Kassin et al. (2018) revealed extensive agreement on topics related to the causes and the consequences of confessions.

Although courts have not set a target percentage for scholarly agreement within a scientific community, Kassin et al. (2018) used an 80% agreement criterion as their measure of scientific acceptance, and they found 80% or greater agreement on a wide range of statements. First, they found substantial agreement regarding factors that make suspects more vulnerable to false confession, including being a child, a person with a cognitive disability, a person with a psychological disorder, or a person who is highly suggestible. Second, their sample of experts agreed about a range of interrogation strategies that increase the risk of false confessions, particularly FEPs, explicit threats and promises, minimization, and enhanced interrogation tactics (described as "torture," Kassin et al., 2018, p. 70, Table 2). In these ways, they found widespread acceptance for scientific claims made by both clinical experts and social or cognitive experts.

Across the legal foundations for expert testimony, particularly the *Daubert* criteria, the fourth of which reflects the *Frye* standard, expert testimony about interrogation and confession appears to meet these standards. Despite disagreement from some courts, the rapidly growing body of research appears likely to guide the triers of fact in trials that involve disputed confessions. We now turn to the effects of expert testimony on jurors and other triers of fact.

Expert Testimony and Triers of Fact

How does expert testimony shape perceptions and legal decisions? How do triers of fact—jurors in a jury trial and judges in a bench trial—respond to expert testimony about interrogation and confession? To examine this question, we first evaluate general impacts of expert testimony, particularly the potential for expert testimony to inspire skepticism or sensitivity, and then we address expert testimony in cases involving disputed confessions.

In studies of criminal trials, expert testimony induces small but reliable effects on verdicts (Nietzel, McCarthy, & Kern, 1999). Scholars have reported two general outcomes of expert testimony. One option is

that expert testimony could induce *skepticism*, leading jurors to doubt evidence in general (McCloskey & Egeth, 1983). Jurors who hear expert testimony could believe that confession evidence is always or almost always unreliable, regardless of characteristics of the defendant, biases of investigators, the interrogation tactics, or other relevant factors discussed earlier. Alternately, expert testimony could cause *sensitivity*, enabling jurors to become more sensitive to variations in the evidence and better able to differentiate between strong and weak evidence (Cutler, Dexter, & Penrod, 1989). Courts and scholars hope that jurors can become more sensitive to details of confession evidence so that jurors can better evaluate the presence and impact of risk factors associated with false confessions. In addition to these possible outcomes of skepticism and sensitivity, there exists a third option. Some courts have rejected expert testimony on the grounds that jurors, with their common knowledge and potentially after hearing attorneys' arguments, are or become sensitive to factors that increase the risk of false confession before they start deliberations about verdicts. Scholars have found evidence for both skepticism and sensitivity, and we examine findings related to skepticism before turning to findings related to sensitivity and to attempts to induce sensitivity in jurors.

Some scholars have reported that the inclusion of expert testimony has made jurors more skeptical about interrogation evidence. Woody and Forrest (2009) found that jurors who read expert testimony rated interrogations as more deceptive and coercive than did jurors who read the same interrogation transcript without expert testimony (for similar impacts of expert testimony on jurors' perceptions see also Blandón-Gitlin et al., 2011, and Woestehoff & Meissner, 2016, experiment 1). Additionally, when jurors read an interrogation transcript with or without deception about evidence, Woody and Forrest (2009) found that jurors who read expert testimony were less likely to convict the defendant and rated his guilt lower, regardless of the presence or absence of an FEP in the interrogation transcript. In other words, jurors did not become sensitive to the presence of deception but became skeptical about all confession evidence. Researchers Dayna M. Gomes, Douglas M. Stenstrom, and Dustin P. Calvillo (2016) as well as Blandón-Gitlin et al. (2011) reported similar skepticism effects on jurors' verdicts. Psychological scholars Skye A. Woestehoff and Christian A. Meissner (2016,

experiment 1), however, did not find that expert testimony affected jurors' trial decisions (but see Woestehoff & Meissner, 2016 experiment 3, for skepticism effects of expert testimony). Additionally, Woody, Stewart, Forrest, and colleagues (2018) extended these methods to deliberating juries. Even with realistic deliberation, jury verdicts showed evidence that expert testimony generated general skepticism rather than sensitivity to deception. In addition to their examination of jurors and juries, Woody and colleagues (2018) also found evidence for skepticism among their sample of sitting judges. Expert testimony induced these expert legal decision makers to be slightly less likely to convict the defendant. Additional investigation is required to evaluate these claims about judges. Despite these findings, Blandón-Gitlin et al. (2011) and others found some evidence that expert testimony made some jurors sensitive rather than simply skeptical, and scholars have continued to evaluate these questions.

Some scholars, however, have reported that experts induce sensitivity more narrowly. Psychological researchers Kelsey S. Henderson and Lora M. Levett (2016) reported that jurors who read expert testimony were more likely to find the defendant guilty when the confession was depicted as consistent with the case facts than when it was not. Jurors who did not read expert testimony remained insensitive to questions of consistency or fit of the confession and the evidence. Despite optimism generated by these findings about consistency, scholars have struggled to induce sensitivity in jurors about suspect vulnerability, investigatory biases, and interrogation tactics.

In addition to these potentially conflicting findings, some scholars have reported that expert testimony led to no significant effects. Across several experimental studies about confessions by defendants (Jones & Penrod, 2016; Woestehoff & Meissner, 2016, experiment 1) or confessions by accomplices or reported by jailhouse informants (Neuschatz et al., 2012; Maeder & Pica, 2014), expert testimony did not affect jurors' trial decisions. These findings suggest that the influence of expert testimony may pale in comparison with jurors' preexisting knowledge or biases.

Could jurors be sensitive to relevant factors without any expert testimony? Some courts have argued for this perspective, and some scholars have found evidence to support these claims. For example, as discussed

previously, the Illinois Court of Appeals upheld a trial court's decision to exclude expert testimony (*People v. Polk*, 2010). They justified this decision with claims that the contents of the proposed expert testimony were within the common knowledge of jurors, that it would not aid the jury in decision-making, and that the jurors heard evidence about the interrogation and would therefore be sensitive without expert testimony (*People v. Polk*, 2010; Jones & Penrod, 2017a). Woestehoff and Meissner (2016, experiment 1) found that jurors were sensitive to factors that increase false confession rates, regardless of the presence of expert testimony, even if this sensitivity did not extend to trial decisions. Najdowski and Bottoms (2012) also demonstrated that some jurors were sensitive, without expert testimony, to the external influences described in the interrogations of juveniles. Other researchers found that jurors were sensitive to inconsistencies between confessions and the evidence (Palmer, Button, Barnett, & Brewer, 2016). Similarly, Kassin and Sukel (1997) found that jurors were sensitive to factors associated with false confessions. In their study jurors recognized coerced confessions and even stated that they discounted the confessions they viewed as coerced. Despite this optimistic finding, jurors were still more likely to convict when a confession was present, even when they recognized coercion and claimed—inaccurately—that they rejected the confession as they decided the case (Kassin & Sukel, 1997).

These scientific tensions have led scholars and courts to seek methods by which to induce sensitivity in jurors (see e.g., *United States v. Hall*, 1996). Recent scholarship by Angela M. Jones and Steven Penrod (2017a) and Christina M. O'Donnell and Martin A. Safer (2017) used novel approaches to address this goal. After evaluating studies that employed expert testimony that did not affect jurors or induced general skepticism (e.g., Jones & Penrod, 2016; Woody & Forrest, 2009), these scholars moved away from presenting expert testimony to their mock jurors and instead presented research-based instructions from the court. Based on evidence that instructions can increase jurors' sensitivity for factors that shape the quality of eyewitness testimony (e.g., Jones & Penrod, 2017b; Pawlenko, Safer, Wise, & Holfeld, 2013), Jones and Penrod (2017a) devised instructions from "the court" (p. 15, Appendix 1; see also O'Donnell & Safer, 2017). These instructions described scientific findings and court decisions related to factors that increase the likelihood

of false confessions (e.g., age of the suspect, minimization, FEPs) and guided participants to ask themselves about the presence and impact of these factors. Although they did not evaluate expert testimony as such, Jones and Penrod (2017a) and O'Donnell and Safer (2017) demonstrated a successful method by which jurors could become more sensitive to factors that increase the likelihood of false confessions. Further complicating these findings, however, Gomes et al. (2016) found that expert testimony but not instructions about the credibility of the defendant induced skepticism about interrogation evidence. As of this writing, we hope that these studies will provide a foundation for future research endeavors to investigate jurors' understanding of factors associated with suspects' vulnerability, investigatory biases, and interrogation tactics.

Conclusions

Expert testimony provides a promising avenue to aid jurors, judges, and other triers of fact in incorporating scientific findings into their decisions about confession evidence. Despite the continuing disputes about admissibility, we recommend that courts infuse expert testimony into suppression hearings, trials, and appeals in cases that involve contested confessions. As we have shown, commonsense knowledge typically held by laypeople does not prepare them to evaluate vulnerability of suspects, biases of investigators, or tactics used in interrogation. Although research findings with expert testimony manipulations have thus far produced limited fruit, the promising preliminary work with instructions demonstrates that jurors *can* benefit from the science of interrogation and confession. We remain optimistic that future scholarship can identify and develop expert testimony and other interventions to educate and to aid courts in the evaluation of confession evidence. In these ways, experts may make substantial contributions to the totality of the circumstances. In our next chapter, we more thoroughly examine safeguards, including jurors, deliberating juries, and trial judges as well as legal and other safeguards that too often fail to prevent a false confession from leading to a miscarriage of justice.

7

Safeguards

Protections for suspects who make false or coerced confessions exist at many places in the legal system. Using the totality of the circumstances model, prevention of false confessions and coerced confessions begins by educating the public that false confessions can and do occur. We then consider safeguards provided by law enforcement, including video-recording interrogations. Next, we consider safeguards provided by trials and appellate courts as well as the ways that those who plead guilty cannot access these protections. Then, we consider abilities of jurors and judges to recognize and reject false or coerced confessions, and we conclude by examining the totality of the circumstances of protections against false or coerced confessions.

The Public

As discussed previously, many of the changes in U.S. police interrogation techniques occurring between the 1930s and the 1970s resulted from the Wickersham Report itself and changing requirements established by courts (e.g., *Brown et al. v. Mississippi*, 1936) as well as from journalistic coverage of the report and of individual cases that left suspects beaten and bruised (Chafee et al., 1969; Hopkins, 1931; Keedy, 1912; Leo, 1992).

There has been another resurgence of public outrage, similar to that of the 1930s and 1940s, as more individuals have become aware of psychological interrogation techniques (Mindthoff et al., 2018). In addition to news articles (e.g., Starr, 2013; 2015a; 2015b) and documentaries such as *The Confessions* and *The Central Park Five* (Bikel, 2010; Burns et al., 2013), interested consumers can turn to 24-hour news stations, cable channels dedicated to criminal investigations, and social media for up-to-the-minute coverage of crime news and real-life drama. How do public beliefs affect police interrogation?

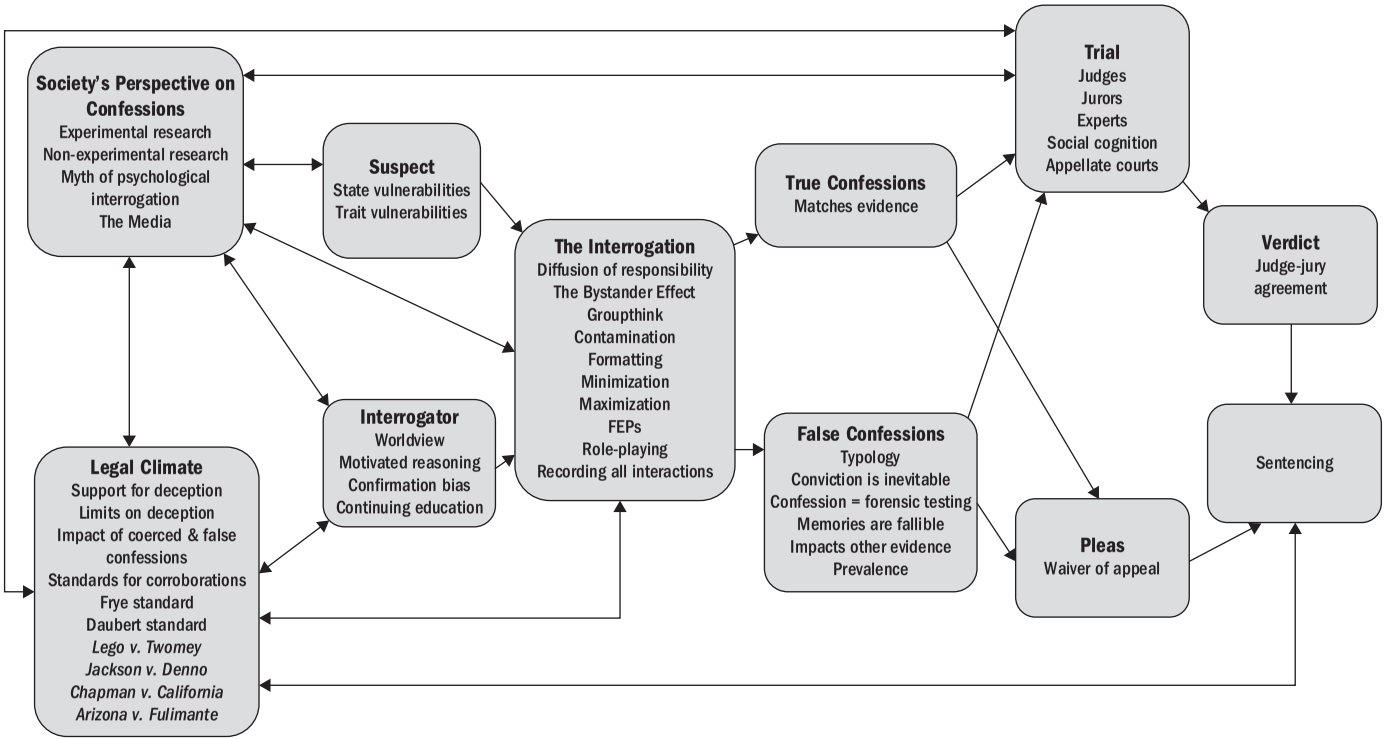

Figure 7.1. Evaluating Safeguards Using the Totality of the Circumstances Model

Myth of Psychological Interrogations

Leo (2008) argues that members of the public, including potential jurors, often accept the myth of psychological interrogation and that a substantial portion of a jury-eligible sample in the District of Columbia believes that suspects rarely confessed falsely. Cognitive psychologist Linda A. Henkel (2008) replicated and extended these results; a majority of her respondents indicated that a confession strongly indicated guilt even when the confessor suffered from a significant medical or mental disorder or the confession was ruled as coerced and inadmissible. In a separate study, when asked what form of evidence is most indicative of a defendant's guilt, participants studied by Henkel et al. (2008) indicated that a confession was second only to DNA in establishing guilt (see also Kassin & Neumann, 1997).

The myth of psychological interrogation extends to self-perceptions as well. Although university-student participants in the Henkel et al. (2008) study were more likely to believe that false confessions occur than were the jury-eligible individuals examined by Leo and Liu (2009), participants were adamant that they themselves would never falsely confess in the absence of torture (see also Woody et al., 2010).[1] Additionally, participants who do not believe that they would confess falsely were more likely to convict a defendant who disputed their confession (Woody et al., 2010). Public outcry does not appear likely to protect false confessors, although recent data suggest that this may be changing (Mindthoff et al., 2018). Additionally, interrogators, attorneys, jurors, and judges are derived from this general public, and they may evaluate confession evidence using similar lenses. We return to these questions below.

Law Enforcement

The segment of society that probably has the most experience with criminal behavior is law enforcement. How can officers consider whether commonly used interrogation techniques are likely to contribute to false confessions? To what extent should officers consider the possibility of false confessions if getting a confession from a suspect could lead to the safety of present and future victims? When does the safety of one

individual outweigh the rights of another? These are the difficult questions that law enforcement officers face every day.

With the exception of extreme cases (e.g., *State v. Kofoed*, 2012), in our experience officers and, more specifically, police interrogators are not zealously eliciting confessions while disregarding the suspect's rights or safety. Rather, interrogators are often, first, unable to identify those individuals at risk for falsely confessing (see e.g., Perlin, 2003; *Sanchez v. Hartley*, 2016) and, second, unaware of how their techniques are capable of eliciting false confessions from suspects who are under stress (Forrest, et al., 2002), innocent (Kassin, 2005), eager to please (Gudjonsson, 1995), or seeking to protect another (Costanzo & Leo, 2007).

Despite these challenges, officers have identified and rejected some false confessions. It remains unknown how many false confessions are eliminated by law enforcement in the course of investigations. Some instances are available in court records (see e.g., *Sanchez v. Hartley*, 2016, in which prosecutors dropped charges against Sanchez after more than two and a half years of investigation), while others are known only to officers in the particular department. For example, a former police interrogator who visited the Seminar in the Psychology of Interrogation and Confession described a confession that everyone in the department believed except one officer, who continued to investigate the suspect's alibi and found clear evidence of innocence (Anonymous Officer, personal communication, March 2015). This and similar false confessions remain uncounted in any assessment of the prevalence of false confessions.

Although media coverage may be increasing officers' awareness that false confessions exist, representatives of the media are not free from bias. The blame is often pointed exclusively at the interrogator and/or the prosecutors, and the totality of the circumstances is often overlooked. Information targeted toward law enforcement (e.g., articles in publications such as *The Police Chief*, the *FBI Law Enforcement Bulletin*, and *The Law Officer*; conferences targeting law enforcement leadership; continuing education and training) can help police interrogators recognize that many of the techniques learned in the beginning of their careers, during on-the-job training, or gleaned from media are no longer recommended by trainers or supported by science. Another example of how police culture has changed is the increased presence and acceptance of cameras in the interrogation room.

Video-Recording

United States consumers began purchasing video cameras in the 1970s; however, their use in police departments did not increase until the mid-1980s (Geller, 1993). Although some departments recorded interrogations as well as confessions, others focused instead on the recap or a summary of the "incriminating and exculpatory statements or . . . [the] confession" (Geller, 1993, p. 4). For example, in the Norfolk Four case, the audio-recordings of the confessions proved to be extremely powerful in court because the defendants recited their final recorded confessions in tedious, emotionless tones (Bikel, 2010). Without a recording of the hours of intense and exhausting interrogation prior to interrogation (Wells & Leo, 2008), jurors were left with these stoic and damning confessions.[2]

We are optimistic about the benefits of video-recording. Recording the interrogation and resulting confession is still not enough, however. Because standard typical police interrogation is often preceded by an interview and because the recording policies are often targeted only at the interrogation, officers often wait until the reading of *Miranda* warnings to begin recording. Waiting until this transition between interview and interrogation to begin recording prevents the observer from seeing the interview tactics, understanding the length of the combined interview and interrogation, or evaluating the suspect's growing stress and fatigue that led up to the direct confrontation, which, as we have discussed, is generally the hallmark of the transition from interview to interrogation in the United States.

These limited recording practices are problematic for at least three reasons. First, the interrogator may introduce evidence or other case-related information during the interview as a strategy to elicit information from the suspect. Officers may intentionally or unintentionally reveal important details that contaminate the confession (Garrett, 2010; Leo et al., 2013; Trainum, 2007). For example, interrogators may show the suspect crime scene photographs of the victim without considering that photos also include information about details such as clothing or the victim's surroundings (Wells & Leo, 2008; Ferek, 2014). Some interrogators incorporated the presentation of evidence or fabricated evidence into the interrogation, as in the cases of Kirk Bloodsworth (Innocence Project, 2018b), the Tucson Four (Stuart, 2010), and John Kogut (Bonpasse,

2013). A second reason rests on findings about police officers' written descriptions of interrogations. Kassin, Kukucka, Lawson, and DeCarlo (2017) found that police reports of simulated interrogations systematically underestimated their uses of confrontation, false-evidence ploys, and minimization and that observers who read police reports viewed the interrogation as less coercive and perceived the suspect as more guilty than did observers who read the actual interrogation transcripts. Third, in addition to protecting suspects from factors known to contribute to false confessions (e.g., contamination and deception), video-recording complete interactions with the suspect provides jurors with an accurate depiction of the interrogation, protects the integrity of any confession presented at trial, and protects the integrity of the individual officers, the larger police department, and the criminal justice system as a whole.

Even when video-recording of an interrogation is available, the equipment or recording may have poor quality. The interrogator's words may be audible, even if the suspect's statements lack similar clarity. Previous arguments against recording have suggested that recorded confession evidence can erode, be misplaced, or become prohibitive due to costs associated with electronic storage as well as physical space. Even some video-recording legislation applies only to suspects interrogated for some crimes but not others and provides several exceptions under which recording is not required (Colorado House Bill 1117, 2016). With the advent of virtual storage, however, concern about space and cost limitations in available electronic recording space has become a less applicable argument against video-recording.

Video-Recording: Camera Angle

Although organization and maintenance of recordings are departmental concerns, from the perspective of the suspect, the greatest concern with video evidence in court involves the camera angle. During one of his presentations at the annual meetings of the American Psychology and Law Society, Saul M. Kassin suggested that if more jurors could see the true nature of the interrogation process rather than just read an interrogation transcript, they would become more aware of the coercion inherent in that process. Psychological researcher G. Daniel Lassiter (2010) then suggested that being able to focus on the process would depend on the

camera angle and more specifically on whom the camera angle focused on the most. This concept, known as the *camera perspective effect*, is grounded in the concepts of perceptual salience and illusory causation. Perceptual salience suggests that when observers watch individuals work together to accomplish a group task or decision, the observers attribute more input and responsibility to group members facing them and less responsibility to group members viewed in profile or from behind (Taylor & Fiske, 1978). Illusory causation suggests that the most prominent actor in the video (typically the one facing the camera) is in greater control over their responses and therefore less affected by the second individual in the visual field, in this case, the less influential-appearing interrogator (i.e., the one whose back is facing the camera; Lassiter, 2010).

From the perspective of those in law enforcement, videotaping of interrogation should offer the observer equal focus on both the suspect and their interrogator(s). In her recent evaluations of several videotaped interrogations, however, Forrest found that the tapes focused primarily on the suspect, showing only the back of the interrogator. In videorecordings depicting two interrogators, observers could only view the back of one while the other was often out of camera range. In the latter case, the camera position even interfered with the police transcriptionist's ability to identify which interrogator was speaking.

Finally, prosecutors have also been concerned that individuals may consider a confession as less valid when a digital recording is unavailable (Shelton, Kim, & Barak, 2007). This is similar to the idea of the *CSI effect*, in which jurors expect scientific evidence to be present in all cases and, if it is not, view this lack of evidence as justification for concerns or even acquittal (Podlas, 2006). Jurors who expect interrogations and confessions to be recorded may evaluate the written evidence in the form of statements and case notes as less true. Across multiple studies (see Podlas, 2006; Schweitzer & Saks, 2007; Shelton et al., 2007), results concerning the *CSI* effect have been mixed. Some have shown that the *CSI* effect is overestimated, while others have only shown an influence when nested within other complex factors such as circumstantial evidence, the presence of expert testimony, and the type of crime. To our knowledge, however, similar investigations have not yet been conducted to evaluate expectations for recorded interrogation evidence and possible influences on judicial decision-making.

Court Decisions and Jurors

Jurors carry much of the burden of recognizing and rejecting coerced confessions. Jurors only decide those cases that go to trial, however, and this forms an important limitation of jurors as safeguards. Because convictions are most often the results of plea bargains, few defendants have access to trial-related protections (Redlich, 2010). For example, of the 48,939 defendants adjudicated in 2009 in 75 large, urban counties, 66% were convicted of their charges, yet only 2% of those convicted went to trial (Reaves, 2013). An overwhelming 98% of those convicted of either felony or misdemeanor crimes pleaded guilty rather than going to trial. These rates are important because guilty pleas are more common in false confession cases than in other cases (Redlich, 2010), likely because the perceived probability of winning appears substantially lower to defendants who expect to face their own confessions at trial. For example, in the Norfolk Four case, Joseph Dick falsely confessed and then, on the advice of his attorney who believed his false confession, pleaded guilty rather than face trial (Wells & Leo, 2008). Additionally, because plea agreements typically include a waiver of appeals, those who plead guilty also fail to benefit from subsequent safeguards, particularly benefits conferred in review by appellate courts (Redlich, 2010).

For defendants who choose to go to trial, jurors carry the largest burden to evaluate confession evidence. How did this burden for jurors emerge in the law? In order to best understand the process by which a defendant's confession is admitted and considered in court, we present legal rulings related to the order in which defendants proceed from suppression hearings to trials to appeals rather than in the chronological order these decisions were made by courts.

Lego v. Twomey

Defendants who seek to challenge their confessions often face a suppression hearing, where a judge decides outside of the jury's presence whether to admit the disputed confession to trial (Kassin & Gudjonsson, 2004). In 1972, the U.S. Supreme Court evaluated claims from Don Richard Lego, who sought to have his confession suppressed on grounds that it was coerced and therefore involuntary (*Lego v. Twomey*, 1972).

Lego admitted that he had confessed to robbery but claimed he did so only because "police had beaten him about the head and neck with a gun butt" (*Lego v. Twomey*, 1972, p. 480). Despite his admission to scuffling with the alleged robbery victim, Lego maintained that photos showed visible injuries resulting from the police beating. The trial judge held a suppression hearing to evaluate voluntariness, heard testimony from the defendant and police, and then admitted the confession to trial without defining the standard of proof used to make that decision. Four years later, after his conviction had been upheld on appeal, Lego appealed his conviction again on the grounds that the trial judge should have used the "beyond a reasonable doubt" standard when deciding whether to admit the confession into evidence.

In its decision, the U.S. Supreme Court first upheld the process related to the suppression hearing, citing its earlier decision in *Jackson v. Denno* (1964), which established the defendant's "due process right to a reliable determination that the confession was in fact voluntarily given and not the outcome of coercion which the Constitution forbids" (*Lego v. Twomey*, 1972, p. 478). The Court then noted that a suppression hearing is only about voluntariness of the confession rather than the reliability of the confession, a distinction we discuss in the final chapter. Next, the Court addressed the standard of proof used to admit a confession to trial.

In its review, the U.S. Supreme Court noted the diversity of standards used across the nation (*Lego v. Twomey*, 1972). Since *Jackson v. Denno* (1964), some states required judges to use "beyond a reasonable doubt" as the standard to admit confessions to trial, while others embraced less strict standards, including "to preponderance of evidence or to the satisfaction of the court or proof of voluntariness in fact" (*Lego v. Twomey*, 1972, p. 479, ftn. 1). The Supreme Court, recognizing the high stakes involved in the issue, agreed to hear the case in order to determine the best standard of proof for determining voluntariness.

The Court connected their decision in *Lego v. Twomey* (1972) to *Jackson v. Denno* by arguing that involuntary confessions, regardless of truthfulness, are unacceptable at trial. In *Lego v. Twomey*, the Court established that, first, the prosecution carries the burden of proof in cases of disputed confessions and, second, the prosecution must prove that the confession was voluntary, but only to the standard of preponderance

of evidence. The Court noted that states were free to adopt more stringent standards than preponderance of evidence for admission of confessions.[3] Although the Court left the decision of guilt to the jury, noting that "juries have been at liberty to disregard confessions that are insufficiently corroborated or otherwise deemed unworthy of belief" (*Lego v. Twomey*, 1972, p. 486), this decision has important implications for any defendant seeking a suppression hearing to prevent prejudicial confession evidence from reaching the jury.

Judges who run suppression hearings face challenging questions, often with limited evidence. Judges hear testimony from the police investigators, and, in the absence of clear evidence of physical coercion or a video-recording of the entire interrogation, judges must decide voluntariness with what Garrett (2010) called a "swearing contest" (p. 1113). As noted by legal scholars Michael D. Pepson and John N. Sharifi (2010), police officers typically carry more credibility than defendants, and police generally win these contests when judges admit confessions at trial. At trial, the responsibility to decide the veracity and probative value of the confession falls to the jury. The Supreme Court's confidence in the abilities of jurors provided the foundation for the reduced standard of proof in *Lego v. Twomey*, in which the Court argued that "our decision [in *Jackson v. Denno*] was not based in the slightest on the fear that juries might misjudge the accuracy of confessions and arrive at erroneous determinations of guilt or innocence" (1972, pp. 484–485). Below, we examine whether jurors can rise to these expectations.

Harmless Error Analysis and Confession Evidence

Despite the long-recognized power of confessions in court, the federal standard to admit confession evidence at trial is the lowest standard of proof commonly used in the U.S. legal system. What happens when a coerced confession is improperly admitted at trial? Until recently, this justified a new trial without the confession, but in 1991 this convention changed with powerful consequences for defendants who seek to dispute their confessions. To understand these legal factors, we must first examine harmless error analysis.

Harmless error analysis came to the United States from Great Britain (see Renfro, 1991). Under the Exchequer Rule in Great Britain, any error,

no matter how trivial, provided legal right for reversal of judgment and a new trial. This bogged down courts and generated substantial financial and time costs. Therefore, Great Britain instituted harmless error analysis in the late 1800s, and the United States enacted similar reforms in 1919 (Renfro, 1991).

If a defendant seeks to appeal a decision due to trial error, an appellate court can engage in harmless error analysis by reviewing the evidence presented at trial and evaluating the impact of the alleged error. If the error is substantial, the court can order a new trial. If the appellate court finds that the error did not impact the trial's outcome, the error is considered harmless, and the court does not reverse judgment and order a new trial (Renfro, 1991). This process allows courts to preserve time, costs, and other resources (Kassin, 2012). Harmless error analysis was encoded more formally with *Chapman et al. v. California* (1967).

Chapman et al. v. California

Once the U.S. Supreme Court decided *Chapman et al. v. California* (1967), it further defined harmless errors and provided additional guidance for appellate courts. The Court noted that in cases of highly impactful evidence against a defendant, the other party (i.e., the prosecution in a criminal case) carries the burden of proving beyond a reasonable doubt that the error is harmless. The Court noted "some constitutional rights are so basic to a fair trial that their infraction can never be treated as harmless error" (*Chapman et al. v. California*, 1967, p. 23; see also *Lynumn v. Illinois*, 1963) and specifically listed improper admission of a coerced confession as an example (*Chapman et al. v. California*, 1967, p. 23, ftn. 8).

Arizona v. Fulminante

In 1991, the U.S. Supreme Court decided *Arizona v. Fulminante*, which revised decades of precedent related to coerced confessions and increased the responsibilities of jurors in cases with disputed confessions. Throughout United States history and in line with *Chapman et al. v. California* (1967), "convictions were routinely reversed whenever an appeals court found that a coerced confession was erroneously

admitted at trial" (Kassin & Sukel, 1997 p. 29). In *Arizona v. Fulminante* (1991), however, the U.S. Supreme Court accepted the contention that the defendant's confession was coerced and improperly admitted to trial, but rather than automatically reverse the conviction or order a new trial, the Court ordered harmless error analysis. The analysis found that admission of the defendant's confession was not harmless and that therefore reversal of his conviction was required. Despite the reversal of Fulminante's conviction, this case established precedent to apply harmless error analysis to coerced confessions that were improperly admitted at trial. We now examine the details of this case.

Oreste Fulminante was imprisoned in New York for an unrelated crime when rumors spread through the prison that he had murdered his 11-year-old stepdaughter. Fulminante then began to face abuse from other inmates. Anthony Sarivola, an inmate who, unbeknownst to Fulminante, was also a former police officer and a paid informant for the FBI, offered to protect Fulminante from other prisoners if Fulminante confessed to the murder. While in prison, Fulminante confessed in detail to Sarivola, and after his release Fulminante confessed again, this time to Sarivola's wife. The State of Arizona used both confessions to take Fulminante to trial.

At the suppression hearing and during the trial, Fulminante's defense argued that he confessed to gain protection from prison violence and that therefore the confession was coerced. Despite this testimony, the judge admitted both confessions as voluntary, and the jury convicted Fulminante. The defense appealed, and the Arizona Supreme Court initially found the confessions to be harmless errors due to the other evidence against the defendant. When Fulminante moved for reconsideration, the Arizona Supreme Court then ruled that, as the U.S. Supreme Court held in *Chapman et al. v. California* (1967), harmless -error analysis was not appropriate for coerced confession evidence and ordered a new trial. The state then petitioned the U.S. Supreme Court, and, despite a powerfully argued dissent from four justices, the closely divided U.S. Supreme Court extended harmless error analysis to cases involving coerced confessions. As noted above, however, a majority of the Court found that the admission of the coerced confession was, in this case, not harmless, and affirmed the Arizona Supreme Court's reversal of the conviction.

In response to *Arizona v. Fulminante* (1991), some scholars have raised constitutional questions about fundamental rights to a fair trial (Ogletree, 1991). Other critics have raised concerns about the potential consequences for police behavior. For example, legal scholar Yale Kamisar (1995) suggested that police who believe that confessions, even if coerced, lead to convictions and that inclusion of a coerced confession could be considered a harmless error may be more likely to use illegal interrogation tactics to get a confession, even a coerced confession, in front of a jury.

In addition to these concerns, the notion that admission of a coerced confession could ever be a harmless error rests on assumptions about judges as well as juries and the abilities of individual jurors. *Arizona v. Fulminante* (1991), in combination with other decisions, prioritizes the responsibilities of jurors and increases the expectations for juries (and judges in suppression hearings and elsewhere; see Hirsch, 2007) to evaluate whether a confession was elicited appropriately and whether the confession provides evidence of guilt (Kassin & Sukel 1997; Wakefield & Underwager, 1998). Judges must be able to recognize *and* reject coerced confessions, particularly at suppression hearings. Similarly, to meet these assumptions, juries must be able to recognize false or coerced confessions, reject these confessions, and decide the case based solely on the other evidence presented at trial. *Arizona v. Fulminante* (1991) and related decisions also increase the likelihood that a conviction based on a coerced or involuntary confession would be upheld on appeal if enough additional evidence was presented at trial for appellate judges to find that admission of a coerced confession is harmless. Of course, as we discuss below, judges are also affected by the presence of confession evidence, even if judges believe the confession was coerced.

Jurors and Juries

It is important to discuss how the presentation of interrogation and confession evidence in the courtroom has evolved. In cases with limited or absent other evidence, the typed or written confession along with the suspect's signature becomes the piece of information that jurors seize as an indication of unquestionable guilt. In the absence of recordings or transcripts, judges and jurors often rely on the testimony of

the interrogator and the suspect to determine whether the confession resulted from appropriate and acceptable police techniques or if the interrogator elicited the suspect's confession in such a way as to threaten the confession's veracity.

Research in persuasion suggests that information is never processed in a vacuum. Instead, information is interpreted within a multifaceted context that includes the message or testimony, the messengers (i.e., the interrogator and the suspect), and the audience or legal decisionmakers (Chaiken, Wood, & Eagly, 1996). Judges and jurors often consider legal factors when reaching a decision concerning the voluntariness and reliability of a confession; however, these same decisions may be swayed by extralegal (i.e., non-evidentary) factors associated with their perceptions of the defendant and the defendant's credibility, existing biases concerning confession evidence, beliefs about the potential for false confessions, and perceptions of law enforcement. Additionally, law enforcement training that encourages video-recording of all interactions between officers and suspects (including in police cars, during off-site interviews, and while waiting for an interrogation room) as well as within interrogation rooms can allow judges and jurors to rely more on interrogation transcripts and recordings and less on the conflicting testimonies of the interrogator and suspect.

One consequence of the rapid growth of video-recording is that jurors are more likely to review actual confession evidence than ever before. This evidence is often in transcript, audio, or video formats. As discussed later in this chapter, in a recent study by Woody, Stewart, Forrest, and colleagues (2018), approximately 67% of the participating district or appellate court judges indicated that they would allow jurors to read the interrogation transcripts. Additionally, in most cases where Forrest has served as an expert witness, jurors have either viewed video-recordings or read transcripts. Although these are important steps in the direction of improving both judges' and jurors' evaluations of confession evidence, there are additional important factors to consider as judges decide whether to admit confession evidence into court.

Within interrogation transcripts, details about the confession are often salient enough to be recognized but not influential enough to influence verdicts. Woody and Forrest (2009) found that jurors are able to

recognize deception and coercion in interrogation transcripts; however, this recognition has only limited effects on jurors' decisions. Compared to mock jurors exposed to interrogations without police deception, mock jurors exposed to interrogation transcripts with police deception rated these interrogations as more deceptive and coercive but were not more likely to acquit. These findings suggest that mock jurors recognize that the confessions may be inappropriately elicited but at the same time they believe the interrogation tactics were not "wrong enough" for them to discount the confession itself (see also Woody & Forrest, 2009; Woody et al., 2013; Woody, et al., 2018).

Extensive evidence suggests that jurors do not consider many factors that could indicate coercion or false confession. For example, jurors accept confession evidence even when the suspect has a mental illness (Henkel, 2008). They also accept confessions generated with maximization or minimization (Kassin & McNall, 1991), confessions induced by FEPs (Woody & Forrest, 2009; Woody et al., 2013; Woody et al., 2018), and secondary confessions from accomplices, even when these accomplices receive substantial rewards for their testimony (Neuschatz, Lawson, Swanner, Meissner, & Neuschatz, 2008; Neuschatz et al., 2012; but see Maeder & Pica, 2014). Although some evidence suggests that jurors recognize factors that should raise questions about accomplice confessions in particular (see Key et al., 2018), these effects persist. As emphasized throughout this work, these effects may also be influenced by the race of the defendant, among other factors (see Maeder & Yamamoto, 2017; Villalobos & Davis, 2016).

Some findings may be as surprising as they are illuminating. As discussed previously, confession can overwhelm other evidence (e.g., Innocence Project, 2018a, *People v. Rivera*, 2011, Wells & Leo, 2008), and Appleby and Kassin (2016) found that jurors accept confessions that conflict with DNA evidence when the prosecution provides an explanation, even a limited explanation, for the conflict. Scholars have also compared recanted confessions to recanted eyewitness testimony. When mock jurors learned that a witness recanted his testimony or that a confessor recanted his confession,[4] they responded differently. They became less likely to convict the defendant indicated by the recanting eyewitness but remained more likely to convict the recanting confessor (Bernhard &

Miller, 2018). Confession evidence affects jurors more powerfully than other evidence.

Jurors appear able to evaluate a suspect's statement in some ways that align with courts' expectations. Henderson and Levett (2016) found that jurors struggled to recognize a confession that did not fit the case facts and that expert testimony enabled jurors to identify these discrepancies. Similarly, researchers Laure Brimbal and Angela Jones (2018) found that mock jurors recognized defendants' lies and confessions, both of which increased conviction rates, and that jurors who read that the suspect only confessed but did not lie were less likely to examine other evidence to further support their verdicts. Several factors may explain why jurors believe that a confession is true.

Based on findings across experimental studies, jurors' beliefs about their own likelihood of confessing falsely predict other outcomes. In their evaluation of more than 700 participants across several programmatic studies, Woody et al. (2010) found that participants are substantially more likely to believe someone else would falsely confess (88.7% believed someone else may falsely confess) and less likely to believe that they would falsely confess themselves (only 28.4% believed this could occur). People who believed that they or others would not falsely confess were more likely to convict a defendant who had attempted to retract his confession and rated him as guiltier on continuous measures (Woody et al., 2010; see Jones & Penrod, 2016, who assessed self-reported likelihood of one's own confession and found similar results).

Across multiple studies, the results are consistent. Laypersons, former jurors, and law enforcement officers believe that false confessions are rare and are the result of individual differences and/or physical coercion (Bedau & Radelet, 1987; Evig, 2013), and mock jurors still struggle with the question, "Would you ever falsely confess?" (Woody et al., 2010; Henkel et al., 2008; Horgan et al., 2012; Jones & Penrod, 2016) Why are individuals, in the face of such powerful evidence, so resistant to admitting that they too could falsely confess? By viewing interrogation and confession through the lens of the totality of the circumstances, we can consider not only legal requirements and attorney behavior but also the social cognition of the jurors and other observers.

Social Cognition and False Confessions

Jurors may attribute responsibility for crimes solely to defendants' choices, and, in turn, these fundamental attribution errors (Jones, 1990) influence legal decision-making. As discussed previously, when making the fundamental attribution error, jurors overestimate the extent to which a defendant's individual characteristics contribute to their behavior and underestimate the extent to which the environment or situation contributed to the behavior. Jurors use this cognitive bias to explain why the defendant would have falsely confessed. By minimizing the influence of the interrogation environment and techniques used by the interrogator (i.e., external influences), jurors typically attribute the confession to characteristics of the suspect (e.g., IQ, mental health, age) while overlooking the power of the interrogation and the totality of the circumstances.

Jurors can also minimize the perceived influence of the environment by "blaming the victim." For example, in sexual assault trials, when jurors view the victim as at least partially responsible for the crime, they are able to reduce their own fears related to sexual assault (Janoff-Bulman, Timko, & Carli, 1985). Jurors maintain this illusion of control by judging victims for "choosing" the wrong environment, engaging in socially inappropriate behaviors, or even wearing the wrong clothes. Those jurors also become more empowered by differentiating themselves as much as possible from the victim (Janoff-Bulman, et al., 1985). One way to do so while evaluating a confession is to subscribe to the common but erroneous belief that "I would never falsely confess to a crime I have not committed."

In the same vein, jurors who believe that the world is indeed fair (Lerner, 1970) may blame both the victim and the defendant for the crime. This "just world" belief has two important corollaries: believing that people get what they deserve and that people deserve what they get. Having a belief in a just world suggests that jurors expect bad outcomes (e.g., commission of a crime or arrest for a crime) to happen to bad people (Lerner, 1970). Jurors who believe that only "bad" people are interrogated by the police may see the ambiguous and yet manipulative nature of police interrogation as an important tool for getting information and therefore a necessary evil (see Shaked-Schroer, Costanzo, &

Berger, 2015). Emerging data support this possibility. Jones and Brimbal (2017) found that participants who more strongly endorsed "just world" beliefs found confession-oriented interrogation techniques (e.g., FEPs) more acceptable than did participants who reported less endorsement of "just world" beliefs.[5]

How do jurors continue to believe that they would never falsely confess to a crime without physical coercion when faced with increasing evidence that others have? One way a juror could feel protection, albeit illusory protection, is to believe the following: (a) I am not a bad person, and (b) I will never put myself in a situation to be arrested; therefore, (c) I will never be arrested or interrogated. Thus, (d) I can never see myself falsely confessing to a crime I did not commit, and (e) anyone interrogated by the police must be a bad person who is guilty. Jurors may then embrace the mistaken belief that no one would confess falsely. Once again, potential jurors may rely on these protective beliefs and assume that a police interrogation lacks the power to overcome a defendant's will to make the rational decision to not confess. As Ofshe and Leo (1997) suggested, however, confessing to a crime one did not commit may actually be a rational decision in an irrational place.

Finally, cognitive dissonance may play a role. As discussed earlier, cognitive dissonance suggests that an individual who behaves in a way that is inconsistent with their beliefs feels uncomfortable and is motivated to reduce this discomfort (Festinger, 1962; Festinger & Carlsmith, 1959; Tavris & Aronson, 2007). A juror who considers the veracity of a confession faces tensions between beliefs about confessions (i.e., I know that I would never confess falsely and that only guilty people confess) and expected behavior (i.e., evaluating a confessor who may or may not be factually guilty). Therefore, they may find it easier to stay consistent by believing the confession and subsequently vote for conviction in order to feel protected. Regardless of whether we evaluate the information as individuals (jurors and judges) or as groups (juries), human thinking biases dramatically increase the difficulties of evaluating confession evidence.

Perceptions of Police Interrogation Strategies

Whether observers evaluate suspects' decisions to confess truthfully or falsely as rational or irrational, these decisions are based on the

observers' beliefs that they know what happens during an interrogation. Police interrogations remain secretive (Leo, 1996b, 2008). With the exception of interrogators, suspects, and experts, few individuals have intimate knowledge of what occurs during the process. Therefore, another reason jurors may underestimate the likelihood that they would falsely confess is that they are unaware of how psychologically powerful interrogation techniques can be (Blandón-Gitlin et al., 2011; Leo & Liu, 2009). For example, individuals reading a realistic interrogation transcript which included a scientific FEP (saying the suspect's fingerprint had been found in the victim's blood when it was not) rated the tactic as significantly more deceptive and coercive than did participants who rated a scientific FEP from a list of possible interrogation techniques (Forrest, et al., 2012).

Other factors shape these decisions, including outcome information. For example, when jurors learn that an interrogation leads to corroborating evidence, they view the interrogation tactics as less coercive than do participants who viewed the same interrogation video but learned that the interrogation did not lead to corroborating evidence (Shaked-Schroer et al., 2015). These findings align with the anecdotal observations reported by Wallace (2010), who reported that jurors "recognize coercion just fine; they just aren't offended by it when they [believe the confession]" (p. 20). Of course, as we have emphasized throughout this book and particularly in this chapter, the mere presence of the confession leads observers, including jurors and judges, to believe it is true. We examine judges' perceptions of interrogation tactics in more detail below.

Due to the nature of interrogation evidence and the type of information present in such evidence, jurors may not know what questions and accusations made by police, if any, are deceptive. As we discussed in our previous chapter, it is important for experts to testify when jurors view interrogation video-recordings. Experts can provide a scaffold for jurors to be able to understand typical and atypical aspects of interrogation as well as the risks and consequences of deception, coercion, and other relevant factors about the suspect and the interrogation.

We discussed the mixed research findings and complex effects of expert testimony on jurors earlier and only briefly address these factors here. In some studies of individual jurors, expert testimony about false

confessions generates skepticism, reducing the likelihood of conviction (Gomes et al., 2016; Woody & Forrest, 2009). But, as we have seen, some scholars have found that expert testimony did not affect jurors (e.g., Jones & Penrod, 2016) or that jurors were already sensitive to interrogation details without expert testimony (e.g., Woestehoff & Meissner, 2016, experiment 1). What effects does expert testimony have beyond individual jurors?

Scholars have extended the study of the effects of expert testimony to deliberating juries. Woody, Stewart, Forrest, and colleagues (2018) found that juries exposed to expert testimony were less likely to convict the defendant than juries who did not read expert testimony. Additionally, during the deliberation process, expert testimony *gained* power. After deliberation, individual jurors who had read expert testimony were more likely to change their private verdict decisions from guilty to not guilty than were jurors who did not read expert testimony. Experts, even as presented in controlled experimental studies, can influence individual jurors' perceptions and, more importantly, trial decisions made by deliberating juries.

Judges

Judge-Jury Agreement

A central question in legal decision-making is whether judges decide cases differently than juries. Unlike jurors, judges are expert legal decision makers. Despite their expertise, how much do judges have in common with jurors as human decision makers, and how do these similarities and differences affect legal processes in cases involving disputed confessions?

In general, the prevalence of judge-jury agreement is inspiring. In their classic study of 3576 actual trials, legal scholars Harry Kalven, Jr. and Hans Zeisel (1966) compared judges' reports of jury verdicts as well as judges' statements about the decisions the judges would have made, and they reported agreement in approximately 78% of trials. Judges also evaluated the degree to which cases were "close," when both prosecution and defense attorneys presented strong arguments, or "clear," when the case for one side appeared substantially stronger (Kalven & Zeisel, 1966, p. 157). When judges reported that cases were close, there were more

judge-jury disagreements. Additionally, most of the judge-jury disagreements shared a common pattern: judges were more likely to convict when juries acquitted. Almost 40 years later, a reanalysis of these data confirmed these outcomes (Gastwirth & Sinclair, 2004).

Ongoing research suggests that these trends remain strong. For example, psychological scholars Larry Heuer and Steven Penrod (1994) evaluated 77 criminal trials, and judges in their sample reported 73% agreement with juries. Similar to findings from Kalven and Zeisel (1966), Heuer and Penrod found that disagreements typically involved judges recommending conviction as juries acquitted. In a recent study of more than 300 trials, other researchers reported similar rates of judge-jury agreement (i.e., 75%) and similar patterns of disagreements (Eisenberg et al., 2005). They also found that the perceived strength of the evidence predicted differences between judges and juries. Specifically, when evidence was weak, judges were more likely than juries to acquit the defendant, and when evidence was strong, judges were more likely than juries to convict the defendant. Eisenberg et al. (2005) reported that, compared to juries, judges used a lower threshold of conviction across cases.

Yet judges show typical human cognitive biases (Guthrie, Rachlinksi, & Wistrich, 2001) and, similar to jurors and other observers, remain affected by inadmissible information in both criminal and civil trials (Wistrich, Guthrie, & Rachlinksi, 2005; Landsman & Rakos, 1994, respectively). Similarly, when psychological researchers Edmund S. Howe and Thomas C. Loftus (1992) evaluated blame attribution of small samples of judges and college students, they found that students placed more blame than did judges on perpetrators but that groups made the judgments in "nearly identical" ways (p. 111). Legal scholars Shari S. Diamond and Loretta J. Stalans (1989) asked judges and laypeople to recommend sentences in four criminal cases; two cases generated extensive agreement, and in the other two cases, similar to other findings (Kalven & Zeisel, 1966; Gastwirth & Sinclair, 2004), jurors recommended more lenient sentences than did judges.

These consistent findings raise important concerns about similarities and differences between judges' and jurors' evaluations of confession evidence. First, if judges are more likely than juries to convict, this suggests that juries have pro-acquittal biases whereas judges' biases are pro-conviction. If so, these differences may generate conflicts on appeal. The

most important questions for us, however, involve cases with disputed confession evidence. If judges and juries agree when cases are perceived to be clear, as cases involving confession evidence may appear to be, then we expect strong jury-judge agreement. We expect this agreement in trial courts, in later appellate courts (where judges may agree with jury decisions at trial), and, in particular, during harmless error analyses by appellate courts, in which judges review trial materials after convictions by juries. Additionally, if cases involve strong evidence, as do typical confession cases, Eisenberg et al. (2005) found that judges are more likely than juries to convict.

There exist few studies that have evaluated judicial decision-making in cases involving disputed confessions. Woody, Stewart, Forrest, and colleagues (2018) conducted an investigation of a small sample of sitting appellate and district judges. Similar to their evaluations of individual jurors and deliberating juries, they randomly assigned judges to evaluate an interrogation with or without an FEP and with or without expert testimony. As we discussed in previous chapters, although most uses of FEPs remain legal, there exist substantial concerns about the potential for FEPs to induce false confessions. How do judges resolve the discrepancies between the scientific evidence that FEPs increase false confession rates—which in turn increase conviction rates—with rulings from prior cases in which FEPs have been "sanctioned by courts (i.e., that the confessions they produce are admitted into evidence)" (Kassin, 2010, p. 233)? Woody and colleagues (2018) asked sitting judges to step directly into these tensions.

In this sample, the judges overwhelmingly indicated that they would admit the confession evidence at trial, and a substantial majority reported that they would allow the jury to read the transcript. Although individual judges, like individual jurors, recognized the deception present in FEPs, they rated interrogations with FEPs as only slightly more coercive than interrogations without FEPs, and the presence of FEPs had no influence on judges' verdicts. Judges applied legal precedent without recognition of the scientific findings about the coerciveness of FEPs. In this initial investigation, judges did not provide additional protections for defendants who face these coercive tactics.

Woody and colleagues (2018) also presented expert testimony to judges in some conditions. Although expert testimony did not influence judges' ratings of the degrees to which they perceived the interrogation

as deceptive and coercive, expert testimony slightly reduced judges' conviction rates. Even though expert testimony had a larger influence on deliberating juries than on sitting judges, expert testimony affected even expert legal decisionmakers. We return to these consequences in our final chapter when we discuss potential reforms to protect defendants who dispute the voluntariness or truthfulness of their confessions.

Alongside their examination of sitting judges, Woody and colleagues (2018) compared trial decisions of judges to those of deliberating juries under nearly identical conditions. In this initial examination of jury-judge agreement in a disputed confession case, they found substantial differences in conviction rates: judges were far more likely than deliberating juries to convict the defendant (70% and 26%, respectively). The confession, which appeared to be strong evidence of guilt, generated the conditions under which Eisenberg et al. (2005) found that judges convict more often than juries.

Woody and colleagues (2018) argue that these judge-jury differences reflect judges' status as legal experts. Jurors are likely to use their common sense to form a meaningful story about the confession (Pennington & Hastie, 1993), and therefore jurors may perceive FEPs to be coercive, even if these views do not fit legal precedents. Additionally, unlike jurors, who may not believe that police can legally deceive suspects during interrogation (Rogers et al., 2010), judges likely know that case law permits police deception about evidence with few limits.

These judge-jury differences have important legal consequences. Most obviously, defendants who challenge their confessions and choose bench trials over jury trials appear to face increased risks of conviction. Second, appellate judges who review confession evidence may be particularly likely to uphold convictions. Third, there are substantial implications for appellate judges who conduct harmless error analyses.

Appellate Judges

As discussed previously, if a disputed confession is admitted at trial and leads to a conviction, appellate judges provide important post-trial legal protections for defendants by evaluating cases appealed by defendants or prosecuting attorneys. Since *Arizona v. Fulminante* (1991), appellate judges have also engaged in harmless error analysis where they consider

the totality of the circumstances of a case and then evaluate whether the admission of a coerced confession influenced the case's outcome.

The findings from Woody and colleagues (2018) suggest that judges would be more likely to view confession evidence as *more* rather than less powerful than would jurors at trial. Harmless error analysis appears to carry *more* risk for defendants on appeal than the earlier practices, in which the admission of a coerced confession to trial was such a severe error as to result in a new trial (see *Chapman et al. v. California*, 1967).

Psychological researchers D. Brian Wallace and Saul M. Kassin (2012) investigated these questions more directly. As discussed previously, Kassin and Sukel (1997) found that jurors recognized coerced confessions, incorrectly believed they had appropriately rejected coerced confessions, and yet were still substantially more likely to convict than were jurors who did not learn about a confession. Wallace and Kassin (2012) presented similar materials to sitting judges in a harmless error analysis task. Judges evaluated trial materials from a fictitious appellate case, including in some conditions a confession generated by evident police coercion. The judges then engaged in harmless error analysis. Judges, like jurors in similar studies (Kassin & Sukel, 1997; Woody & Forrest, 2009; Woody et al., 2018), recognized coercion; a substantial majority argued that the high-pressure interrogation was coerced, and nearly all of these judges stated that the confession should not have been admitted to trial. Despite this recognition of coercion, judges struggled to reject the confession. When the other evidence was weak and there was not a confession, only 17% of the judges convicted the defendant. When other evidence was weak and there was a high-pressure interrogation that most judges viewed as coerced and inappropriately admitted to trial, they did not reject the confession; 69% of judges in this condition convicted the defendant. Appellate judges engaged in harmless error analysis face the same difficulties as trial judges and juries. Even when these legal experts recognize the coercion and state that they reject the confession, the confession remains so powerful that it affects their decision-making about whether to uphold the conviction or reverse based on a finding of harmful error.

Across the small but growing body of data surrounding judges' perceptions and decisions regarding disputed confessions, judges do not appear to provide adequate safeguards for suspects who dispute their

confessions. Judges appear substantially more likely than juries to convict defendants, and, despite recognition of the deception inherent in FEPs and some recognition of the coercion, judges' perceptions and decisions remain unaffected by FEPs. Similarly, despite judges' largely accurate identifications of coerced confessions, the confession evidence affected their decisions, even when they stated that it should not.

Conclusions

Several safeguards exist for defendants who seek to recant their confessions and to prevent a false or coerced confession from leading to a mistaken conviction. The public and law enforcement may provide safeguards, particularly through balanced-perspective video-recording practices that protect suspects, police interrogators, and others. Unfortunately, despite the confidence that courts have shown in the abilities of jurors, deliberating juries, and judges, research has not justified this confidence.

The findings presented in this chapter suggest three areas of concern across the totality of the circumstances. First, although triers of fact are aware that under some circumstances confessions are coerced, those same individuals are either unwilling or unable to discount confession evidence. *Yet they think they do.* As discussed in the previous chapter, expert testimony can educate the court, but it is difficult for experts to changes people's deep-seated beliefs, even mistaken beliefs such as the myth of psychological interrogation. Second, failure to ignore coerced confession evidence still occurs when defendants have retracted their confessions and when decision makers have extensive legal education and experience, as is characteristic of judges. These triers of fact report that they do not give the coerced confession the same weight as they would a voluntary confession, and yet outcomes across studies suggest they do. Third, expert testimony has a small to moderate influence on triers of fact. Consistent with our first concern, it is exceedingly difficult to change the minds of those individuals whose beliefs are deeply rooted and whose behaviors support those beliefs. Only when we provide contradictory evidence to these decisionmakers in an environment that allows for questions, reflection, and discussion (as in university education

and similar settings) can scholars and advocates for better police interrogation methods encourage judges to be more open to academic findings in a way that can still be grounded in the law. Until then, the confidence that the legal system and the people have placed in decisionmakers as unbiased evaluators and legal safeguards appears overly optimistic.

Conclusions and Recommendations

This final chapter examines recommendations for reforming police interrogation in the United States. We focus on the totality of the circumstances, examining the interrogation process but also recommending reforms to the larger system. Fundamentally, we seek to reduce false confessions, provide diagnostic tools to police interrogators, and support police officers, prosecutors, defense lawyers, trial judges, appellate judges, and others who must navigate this complex terrain.

We open by reviewing reforms directed at reducing the likelihood of false confessions. Optimistically, we seek the elimination of false confessions. We recognize that this is an aspirational goal. We hope these recommendations can help to reduce the likelihood of false confessions and related errors. After proposing interventions aimed at identifying and protecting vulnerable suspects, we address investigatory biases held by police interrogators, forensic analysts, prosecutors, and others. Then we examine interrogation tactics and renew our call for the end of deception in police interrogation rooms in the United States.

In addition, we provide recommendations for larger reforms to reduce the likelihood that a false confession may lead to a mistaken conviction. We examine a wide range of possible reforms, including revisions to standards of proof for admission of a disputed confession at trial and statutory changes to corroboration procedures. Across these topics, we recognize the importance of seeing these reforms not as individual actions or as steps to address two or more issues that may interact, but as reforms to the totality of the circumstances.

Continuing Education

We strongly recommend continuing education for all individuals involved in these processes. As noted throughout this text, the legal

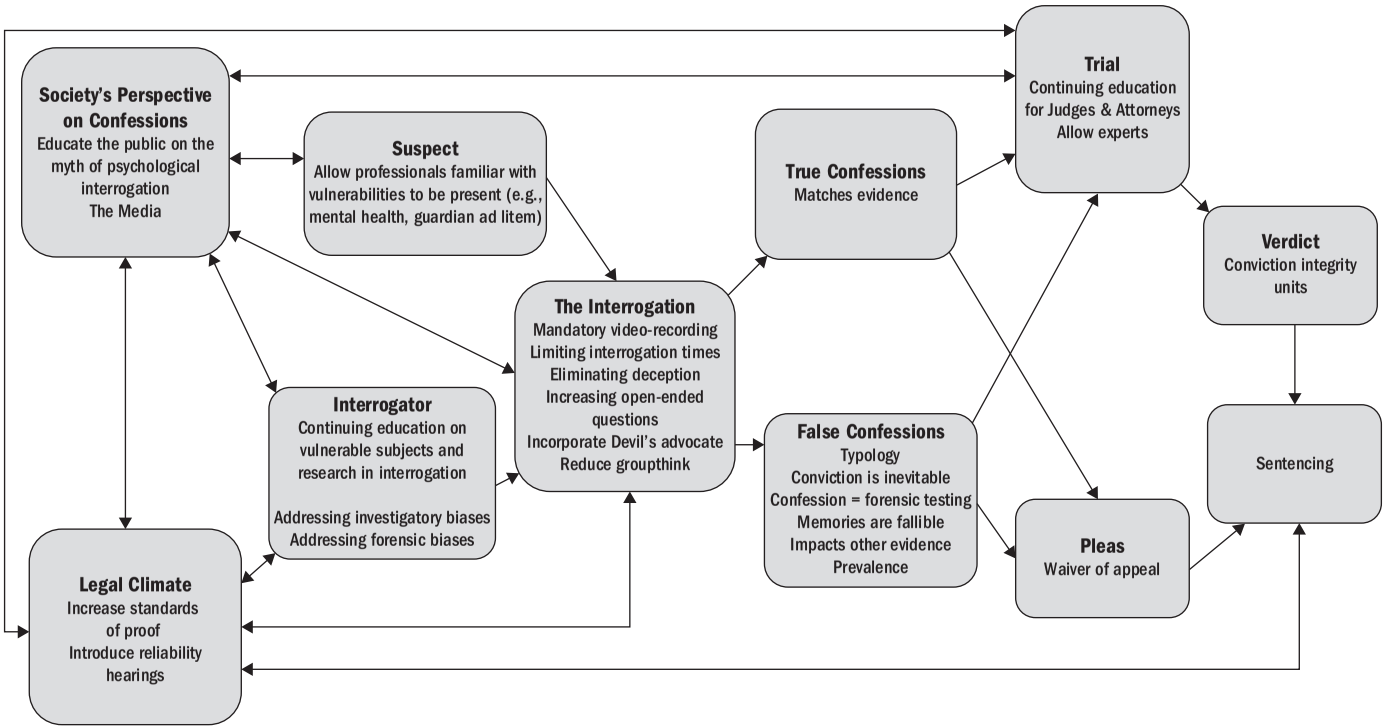

Figure C.1. Evidence-Based Recommendations Using the Totality of the Circumstances Model

precedents, state and federal statutes, and public opinion have changed extensively in the past century and appear likely to continue to do so. For continuing education, we emphasize police because they are the front line of the criminal justice system and because officers already face continuing educational requirements. Police are typically present inside and outside interrogation rooms. They serve with forensic analysts who evaluate legal evidence, alongside district attorneys who prosecute the cases, and as witnesses in court when there are disputes about interrogation tactics and outcomes. Of course, police training has changed extensively in past decades. With each new edition of the Inbau et al. (2013) interrogation manual there has been greater emphasis on psychological vulnerabilities in potential suspects, legal decisions related to interrogations, and other factors interrogators should consider when questioning a suspect. Although throughout this book we have raised important questions about their methods and worldviews, we applaud their willingness to incorporate new interrogation scholarship. As we remind officers in training settings, new officers appear very likely to face increasing limits on interrogation tactics, higher expectations for recognizing suspects' vulnerabilities, and cross-examinations about deception. Officers also appear likely to face growing risks to their careers and livelihoods due to loss of qualified immunity (e.g., Bandler, 2014a, 2014b; *Sanchez v. Hartley*, 2016; Woody, 2017), risks that their more senior mentors are unlikely to have faced.

We also recommend continuing education for forensic investigators, prosecutors and defense attorneys, and trial and appellate judges. Education for these parties, as well as for police, should include knowledge about the existence, causes, and consequences of false confessions as well as the interactions between these factors and the larger totality of the circumstances. A particular emphasis for continuing education must be the growing scientific literature about police interrogation, with emphasis on risks, consequences, and human cognitive biases.

Recommendations for the Interrogation Process

Before examining reforms to the three primary factors that drive false confessions (i.e., vulnerable suspects, investigatory biases, and

dangerous interrogation tactics), we consider general reforms to the practice of police interrogation, beginning with mandatory video-recording of interviews as well as interrogations.

Mandatory Video-Recording

We join others (e.g., Kassin et al., 2010; Leo, 2008; Lassiter & Meissner, 2010) in our calls for mandatory video-recording of the entire interview and interrogation process from a balanced perspective (Lassiter & Meissner, 2010; Lassiter, Ware, Lindberg & Ratcliff, 2010), without which confessions cannot enter trial, except under special circumstances. Leo et al. (2013) argue that without a video-recording, "there is simply no way for third parties such as prosecutors, judges, juries, and appellate courts to detect whether police interrogators have contaminated/formatted the suspect's false confession, and thus no meaningful way for the traditional safeguards of the criminal justice system to prevent the contaminated/formatted false confession from leading to a wrongful conviction" (p. 800). A balanced-perspective video-recording protects suspects, officers, prosecutors and defense attorneys, and trial and appellate courts.

A video-recording can provide evidence of any coercion by officers. A complete video-recording is necessary to evaluate deception, coercion, and potential contamination and formatting of a confession (Leo & Ofshe, 1998; Leo et al., 2013). Additionally, some scholars have found that informing police that they are being video-recorded reduces the likelihood that they will use minimization tactics and enables them to better distinguish guilty and innocent suspects (Kassin, Kukucka, Lawson, & DeCarlo, 2014).

Video-recording protects officers as well. A video-recording can support officers' testimony. A clear record of every aspect of the interrogation can impress upon jurors and judges that the officer used best practices in gathering and preserving evidence during interrogation and can clearly demonstrate that the officer did not coerce the suspect (Boetig, Vinson, & Weidel, 2006).

A video-recording can also help prosecutors, defense attorneys, and judges to evaluate the suspect's behavior during interrogation, including the potential need for expert assessment of the suspect for potential mental illness, cognitive disability, intoxication, or other trait and/or

state vulnerabilities. Video-recordings can also reveal potential issues about which experts could educate the court, and experts often rely on video-recordings to evaluate confessions, decide whether to testify, and prepare their testimony. Video-recordings can also help defense attorneys with what FBI authors call "'client control,' cutting through [potential] inconsistencies told to the representing attorneys about what actually occurred" (Boetig et al., 2006, p. 234) during the interrogation. In addition to these benefits, the use of best practices demonstrates to the public that police, and by extension the larger criminal justice system, seek transparent, thorough, responsible investigatory strategies, a particularly important goal in the current climate of interactions between police and communities (Alexander, 2014).

As we have seen, however, video-recording is not currently being used to its full potential. First, video-recording is required only in some jurisdictions, even if these jurisdictions are growing in number. Second, even in states with video-recording requirements, statutes may provide a range of exclusions that eliminate the requirement to record (e.g., a 2016 statute in Colorado requires video-recording only when suspects are facing accusations of some specific crimes and eliminates the mandate in cases in which the recording technology fails). Third, video-recording mandates may include the interrogation but not interviews and other interactions that could lead to interrogations.

Despite these limits, video-recording remains an essential tool for evaluating confessions. We recommend video-recording of *all* interactions with suspects, including interviews with witnesses or others who may become suspects and witnesses whom officers do not expect to become suspects. We strongly support recommendations from the Uniform Law Commission and others (Taslitz, 2012; Leo et al. 2006; Leo et al., 2013) that failure to record the interrogation could constitute grounds to suppress the confession from trial, even if this strong requirement is not always enshrined in state laws. Below, we return to these issues alongside recommendations for statutory revisions for reliability hearings.

Limiting Interrogation Times

Although the U.S. Supreme Court has raised important questions about excessively long interrogations, it has failed to set a maximum limit. We

call for police interrogators, district attorneys, and courts to set expectations for shorter interrogations. As we have seen, interrogations that led to false confessions lasted far longer than typical interrogations (Drizin & Leo, 2004). We recommend time limits set within departments that officers can extend under certain conditions after review and authorization (see Kassin et al., 2010).

Protecting Vulnerable Suspects

We have noted throughout this text the additional trait or state vulnerabilities faced by some suspects. We have raised particular concerns about those with trait vulnerability: juveniles and those with cognitive disabilities low intelligence, and/or mental illness, among other factors. Of course, nearly any suspect may face state vulnerability, particularly fatigue, which is nearly ubiquitous in long interrogations, as well as intoxication, withdrawal, side effects of medications, and other factors. How should police officers consider these difficulties?

Police face exceptionally difficult interrogation decisions, generally with limited evidence, and often must navigate the fact-finding phases of multiple criminal investigations simultaneously. Police must develop and maintain a wide range of expertise related to their professional roles, and continuing education remains foundational for police in areas as diverse as driving, crime scene protection, crowd control, and interrogation. Police officers are therefore unlikely to be experts about developmental differences between juveniles and adults or about people with cognitive disabilities, mental illnesses, or other trait or state vulnerabilities. Expertise in these fields of applied psychology typically requires years of undergraduate and graduate education, commonly at the doctoral level, as well as rigorous internships, examinations, and other licensing and credentialing requirements that vary by state. Psychological assessment of people with potential psychological disorders or cognitive disabilities remains exceedingly difficult. Even those qualified to engage in such testing can disagree concerning diagnoses. Additionally, people with cognitive disabilities may hide or de-emphasize their symptoms or diagnoses to avoid social stigmas (Herrington & Roberts, 2012). It is unrealistic to expect police officers to have the professional expertise in psychological assessment required to evaluate suspects for these forms of trait vulnerability.

The consequences of these limitations are evident. Suspects who need additional protection, particularly older juveniles who may appear similar to adults (especially to observers unfamiliar with developmental science) or suspects whose cognitive disability is mild, manageable, or hard to detect in typical interactions may not receive any additional protections (Perlin, 2003). Officers interrogate suspects with mental illnesses or other vulnerabilities in ways similar to the interrogations of others (Redlich, 2004). As we have seen, the costs are high.

Before we consider juvenile suspects, how can police officers identify suspects with other longterm or trait vulnerabilities? Using a voluntary interview, officers should question suspects about their physical and mental health histories as well as their educational and professional histories (Inbau et al., 2013; Jayne & Buckley, 2017). These questions could reveal relevant conditions or diagnoses as well as current and historical medications that may interfere with the interrogation process. For example, a health interview may have revealed Thomas Sawyer's anxiety disorder and other issues to police detectives, who would have been less likely to misinterpret his anxious behaviors as evidence of guilt (Kassin, 2006). The opening interview could also reveal educational or professional historical events that may indicate vulnerability, such as a failure to complete K–12 schooling or participation in special education programs. Of course, these modes of inquiry are not conclusive. Police should consider the possibility that a suspect who has not completed high school may have limited intelligence, even if many social, familial, and other factors may have interfered with an individual's education. What steps should police take when their questions reveal a medical, psychological, or educational history that raises questions?

We recommend that officers work alongside professionals who have expertise in assessing and working with people who have mental health issues and/or cognitive disabilities. Although historical tensions sometimes exist between police officers and professionals who work in these fields, pilot programs that require cooperation of police officers and mental health professionals have led to success. For example, some jurisdictions now have mental health professionals respond alongside police officers when calls involve an individual whose behaviors suggest that mental health intervention could be warranted (Brown, 2016; Osher,

2018). A similar model could provide support for suspects and police officers in interrogation situations.

Professional evaluation and intervention could reduce the likelihood of false confession from vulnerable suspects and protect officers from liability. To maintain credibility in the community as well as support from courts, professionals should maintain independence from the police department (see *Leyra v. Denno*, 1954).[1] Failure to maintain independence brings risks to suspects and potentially to mental health professionals. For example, Wayne Price, a deputy for the Gage County Sheriff's Office in rural Nebraska, participated in interrogations and questioned at least two women who had been former clients in his psychological practice (Ferek, 2016). In addition to the myriad of legal difficulties associated with this case, these actions prompted some forensic psychologists to question Price's professional ethics (Huddle, 2009). Suspects must be able to trust professionals, who must also meet HIPPA guidelines and maintain related ethical standards (see, e.g., American Psychological Association, 2017). Psychological and other experts could evaluate suspects before interrogation and could recommend legal support, treatment, or other interventions prior to interrogation.

These reforms would reduce, or hopefully eliminate, the likelihood that police officers would feel isolated when faced with difficult questions concerning potentially vulnerable suspects. For example, in the *Sanchez v. Hartley* case discussed earlier, the officers who interrogated Sanchez discussed his "noticeably unusual behavior," which was "amplified" by his fatigue in the long interrogation (*Sanchez v. Hartley*, 2016, p. 10). Police interrogators even arranged a urine test to determine whether Sanchez was intoxicated; he was not. Despite these observations, concerns, and substance evaluations, the detectives continued to interrogate Sanchez, who eventually falsely confessed. Although potential outcomes in a single case cannot be known, a mental health professional who heard officers' concerns would have the potential to intervene, seek assessment or records of prior evaluations (pending approval from Sanchez), and identify issues that affected Sanchez's behavior. This expert could have also protected Sanchez from the long, confrontational interrogation *and* protected officers from the consequences of inducing a false confession. In this case, officers lost qualified immunity and faced personal financial liability for their actions.

Some suspects are vulnerable for cultural reasons. As we have seen, cultural biases about race and crime can lead observers to be more likely to assume that an African American or Latino suspect is guilty (Villalobos & Davis, 2016; Welch, 2007). Additionally, Najdowski and colleagues (2011, 2015) show that suspects remain acutely aware of these cultural biases, experience stress due to the stereotypes that associate race with criminal behavior, and engage in stress-related behaviors that are particularly likely be interpreted as signs of deception and guilt. Although some of this increased vulnerability rests on factors outside the suspect (i.e., the biases in the larger culture that are likely held by the interrogators, prosecution and defense attorneys, judges and others; Villalobos & Davis, 2016), these factors combine to make some suspects particularly vulnerable. The theoretical framework of stereotype threat (see Steele, 2010; Najdowski, 2011) suggests that these factors apply to other suspects as well, including the four Alaska Native teenagers who endured intense and confrontational interrogations while severely intoxicated, faced extensive false-evidence ploys and other deceptive tactics, and falsely confessed (McDannel, 2016). Protection of such suspects remains a difficult goal. Psychological researchers J. Guillermo Villalobos and Deborah Davis (2016) recommend continued education about cultural vulnerabilities for police, prosecutors and defense attorneys, and judges as well as expert testimony to educate courts about these issues. In addition to formal education, we encourage individual reflection concerning cultural questions about vulnerable suspects, particularly the contemporary consequences of historical discrimination (Loewen, 2005, 2018; Wilkerson, 2010).

PROTECTING JUVENILE SUSPECTS

As has been evident throughout this book, juveniles remain particularly vulnerable to false confessions. Therefore, we recommend substantial caution, and we provide specific recommendations for interrogating juveniles that replicate and extend the protections for other vulnerable suspects. Among other factors, the increased vulnerability of children to persuasion (Steinberg & Monahan, 2007) as well as their limited self-regulation compared to adults (Steinberg, 2008) combine to make the totality of the circumstances particularly risky for children who face police interrogation. We therefore recommend that officers work

alongside developmental experts who can evaluate children, much as we recommend that officers work with professionals to evaluate other potentially vulnerable suspects. In addition to our calls for collaboration with experts, we recommend that the required law enforcement continuing education should also include developmental psychology (American Psychological Association, 2014).

Protections are clearly needed. Cleary and Warner (2016) found that police continue to interrogate juveniles in ways overwhelmingly similar to the ways they interrogate adults. Additionally, other researchers illustrated that officers trained by John E. Reid and Associates, Inc., were *less* aware of developmental issues that increase children's vulnerability in comparison with adults than were officers who had not been trained by John E. Reid and Associates, Inc. (Kostelnik & Dickon Reppucci, 2009). In particular, officers who had been trained by John E. Reid and Associates, Inc., were more likely than other officers to agree that children are legally competent and to endorse the use of FEPs, minimization, and other deceptive tactics (Kostelnik & Dickon Reppucci, 2009). Education based in the psychological science of child development could address these discrepancies, and support from scholars of human development could provide further protections for suspects and officers.

Although throughout this book we call for the elimination of deception for interrogations of *all* suspects, we are adamant concerning interrogations of juveniles. Even John E. Reid & Associates, Inc., who strongly support trickery and deception, now caution against the use of deceptive tactics with children (2013; International Association of Police Chiefs, 2012; see Spierer, 2017, for a stronger claim). Similarly, we join others in recommendations against confrontational approaches (Herrington & Roberts, 2012), which are associated with a greater likelihood of false confessions by adults (Houston et al., 2014; Meissner et al., 2014), particularly given the greater adolescent sensitivity to social influence (Steinberg & Scott, 2003; Steinberg & Monahan, 2007). We also recommend shorter interrogations, more breaks, and "short, simple, and open questions" (Herrington & Roberts, 2012, p. 183; Milne & Bull, 2001).

In addition to these factors, we join Redlich (2007) in calling for greater scientific investigation of interrogation methods suited for juveniles, particularly juveniles who face additional vulnerabilities through

cognitive disability or mental illness. We hope that continuing education can enable police officers to bring their interrogation tactics in line with scientific findings from child development and interrogation scholars (see Herrington & Roberts, 2012).

We support recommendations from the American Academy of Child and Adolescent Psychiatry [AACAP] (2013), among others (e.g., APA, 2014), to have a guardian *ad litem* or another attorney present during the questioning of children. Although we concur with the AACAP (2013) that children should be able to consult with parents, we share concerns that parents are not typically knowledgeable about the law or otherwise legally competent to advise children about their rights. Additionally, as noted by legal scholar Barry Feld (2006), parents may share perspectives with police or otherwise have interests that conflict with the child's interests; for example, a parent may be the victim of the crime about which the child is being interrogated. Also, parents may not know that police can lie about evidence and may even support officers' goals by applying parental pressure to encourage their children to confess (Grisso, 1981; Grisso & Ring, 1979). In these ways, parents can hurt rather than help their children in interrogation settings. For example, Timothy Masters's father believed officers' claims that Tim was guilty, and he entered the interrogation room to persuade Timothy to confess (Masters & Lehto, 2012). Timothy, who was factually innocent, continued to refuse to confess, despite the intense pressure from his authoritarian father. Tragically, Timothy's father come to believe in his son's innocence but passed away before Timothy's exoneration.

In addition to these recommendations, we encourage officers, attorneys, and courts, among others, to remain vigilant about suspects with multiple vulnerabilities. As noted by Redlich (2007) and others (e.g., Teplin, Abram, McClelland, Dulcan, & Mericle, 2002), juveniles with mental illnesses are extremely prevalent in the criminal justice system; therefore, "the likelihood that the police will interrogate a juvenile with a diagnosable disorder is actually higher than the likelihood of interrogating a juvenile without such a disorder" (Redlich, 2007, p. 609). As noted previously, these individuals face greater risks of false confession, need more legal and other support, and appear difficult to identify for typical officers.

Addressing Investigatory Biases

As we have seen, officers seeking to corroborate a confession rely on their own typically pro-guilt biases, which combine with social factors and typical human cognitive biases. Yet officers and others can take steps to reduce or manage social and cognitive biases.

SOCIAL BIASES

Earlier, we reviewed social factors that affect investigatory biases. We noted the bystander effect and diffusion of responsibility, both of which address difficulties police officers face in raising questions about a suspect's potential innocence or about interrogation strategies. An individual officer may assume that others would raise doubts if they had doubts. The responsibility for raising questions therefore diffuses across the group, reducing the likelihood that any given officer will raise concerns. Groupthink, compounding these social influences, occurs when pressures for group loyalty and conformity overwhelm the need for accuracy. How should officers challenge these human social biases?

Many strategies supported by research involve inviting meaningful dissent. Speaking out is critical, even if difficult, particularly in these settings where unanimity appears strong and officers feel loyalty to their peers and units. Police departments can reduce these social factors, with institutional and cultural changes within departments. Leadership in these changes should come from the top.

Chiefs, sheriffs, and other senior officers should establish expectations that officers can and should dissent, even intensely and argumentatively, without negative professional consequences such as termination or loss of status (e.g., demotion from high-profile detective work to other duties). Developing a culture in which it is safe and encouraged to challenge other officers, including superiors, can increase the likelihood of dissent, which in turn can reduce the power of social biases. It appears that directive leaders are more likely to induce groupthink than are leaders who actively participate in decision-making (Chen, Lawson, Gordon, & McIntosh, 1996). Although the paramilitary organization of typical police departments appears most compatible with directive leadership and although directive leadership appears effective in many aspects of policing, in interrogation contexts

we encourage participatory decision-making that invites and recognizes the contributions of all involved officers.

Beyond general recommendations to support dissent, we recommend specific changes. We recommend that departments establish a process by which any officer can pause a discussion, interview, or larger investigation, consider the case away from the physical presence of others, and then reconvene and discuss options. We also note, however, that even if other officers are not physically present, they may be psychologically present (i.e., they may exert pressures to conform, even if in another room), particularly if a new police officer is considering challenging a senior or superior officer.

Therefore, we recommend that police officers involved in a particular investigation invite or assign a devil's advocate who suggests plausible alternate scenarios. Psychological researchers Edward R. Hirt and Keith D. Markman (1995) asked participants to generate alternative scenarios in a complex situation. They found that participants who generated multiple alternatives were less affected by groupthink and that plausible alternatives reduced biases more than implausible alternatives. This suggests that those assigned as devil's advocates should anchor their arguments to realistic alternative scenarios. Although dissenters may need to be assigned, authentic dissenters appear more effective (Nemeth, Brown, & Rogers, 2001); therefore, we recommend that investigation leaders encourage open and authentic dissent. Officers may even seek former defense attorneys to serve in these roles and to identify potential problems with an investigation.[2] Former defense attorneys' worldviews and trial experiences challenging prosecution theories could help officers to avoid errors. Other options can address these issues as well. For example, intelligence agencies must evaluate multiple complex explanations of their data in ways that appear similar to officers' responsibilities to corroborate confessions with independent evidence. In some settings, despite the cost in time and resources, intelligence agencies assign multiple teams to argue for different interpretations of the data, similar to ways that both trial lawyers and military units may employ some of their own to play the role of the other side in training or in preparation for trial or combat (United States Government, 2009). These strategies can reveal alternative suspects, omissions or limitations in evidence, and other problems. As noted previously, these activities require an explicitly

safe place for officers to disagree, even with more senior officers, and potentially to be wrong without consequences to employment. Superior officers should build a culture that encourages critical thinking over loyalty and unanimity.

COGNITIVE BIASES

As we have argued throughout this book, the cognitive difficulties of corroboration exist not because people think like police but because police think like people. Cognitive biases present different challenges and require different solutions than do social biases. First, as discussed above, we recommend participatory leadership in an environment where dissent is safe and encouraged (Rossmo, 2008). Second, we suggest that officers learn about confirmation biases and strategies for overcoming them (Murgado, 2014). These biases are also relevant when officers interview survivors of sexual and other forms of assault. As discussed earlier, officers' expectations about survivors of assault may lead them to doubt victims' accounts, provide negative experiences for victims who then feel like suspects, and potentially even reject valid claims of assault (Hefley, 2013; Monahan & Polk, 2018).

One fundamental strategy to address confirmation bias is to shift from confirming what we believe to using science-based strategies of falsification (Popper, 1959). How does this look in practice? Veteran police officer Amaury Murgado (2014) describes ways to "work backwards" (¶23) by first attempting to demonstrate that the suspect is innocent and then looking for ways that these arguments fail. These strategies require remaining open to alternative theories and waiting to form final opinions until investigators have gathered all known evidence. We recommend that officers embrace these strategies, and we suggest additional procedural changes to reduce the factors that set confirmation bias into motion.

Some aspects of investigations trigger confirmation bias. When officers must create hypotheses about a suspect's guilt (e.g., when an officer must decide whether to arrest or whether to interrogate a suspect) before having all of the evidence, these preliminary expectations can shape the officer's pro-guilt biases for the rest of the investigation (see Lidén et al., 2018a). Additionally, as Lidén et al. (2018a) note, these decisions often occur under pressures of time and other substantial stressors, therefore

increasing cognitive load—the amount of mental effort required—for officers and interfering with critical thinking. How can police reduce behaviors associated with confirmation bias?

Lidén et al. (2018a) argue that in typical police departments "it is hardly feasible that a colleague's . . . apprehension of a suspect can be kept secret from the interrogating officer" (p. 338). Therefore, they presented officers with realistic scenarios and manipulated whether officers had to decide both whether to arrest and whether to interrogate a suspect or had to decide only whether to interrogate. They found that officers had stronger presumptions of guilt when they made both arrest and interrogation decisions. Additionally, Lidén et al. (2018a) found less confirmation bias among participants who engaged in less demanding cognitive tasks. We encourage police departments to act on these theory- and data-driven recommendations by separating the processes of arrest from interrogation, and particularly separating the individual officers engaged in these tasks. We also encourage, to the degree possible, additional time and space, reduced distraction, and similar interventions for officers preparing to interrogate suspects so that these officers can reduce their cognitive load.

As discussed earlier, cognitive biases affect all humans, including judges. As Wallace and Kassin (2012) found, judges who report that they recognized and rejected a coerced confession remain affected by the confession evidence as they decide the case. Lidén, Gräns, and Juslin (2018b) studied judges in ways similar to their study of officers. They asked judges to evaluate the strength of evidence against a suspect, the suspect's trustworthiness, and the suspect's guilt, among other factors, after judges decided about the suspect's detention or learned that a colleague decided the suspect's detention. Similar to findings about officers and arrest decisions, Lidén et al. (2018b) found that judges who decided to detain suspects viewed the evidence against those suspects and the suspects' guilt as stronger. We recommend separating these and related decisions into different courts or at least distributing them among different judges. These findings suggest that separation and distribution of several related decisions—for example, whether to detain, whether to issue a warrant for arrest or search of a residence, whether to admit an expert, and whether to admit the confession into evidence at trial—among different judges would reduce confirmation bias. This in turn

could reduce the likelihood that a misclassification error could lead to a false confession and then to a mistaken conviction. Of course, trial judges run admissibility hearings (i.e., *Frye* or *Daubert* hearings), suppression hearings, and trials, and our recommendations must fit within typical court procedures. Yet the benefits of reducing confirmation bias are substantial for all parties involved.

These findings lead to additional recommendations. We recommend separating other decisions to the degree possible. For example, police and other investigators who acquire evidence for arrest should not be the same investigators who seek evidence to corroborate the confession. These effects appear likely to extend to other individuals. The risks that false or coerced confessions could influence defense attorneys are striking. For example, Joseph Dick's attorney believed Dick's confession and encouraged him to take a plea deal to avoid life in prison (Bikel, 2010). Kukucka and Kassin (2012) found that examples of bad lawyering and government misconduct are more common in false confession cases than other cases of mistaken convictions, suggesting that defense attorneys and others face these cognitive challenges and that their biases lead them to behaviors that are problematic for defendants.

Forensic Analyses

States should adapt testing requirements to ensure that forensic analysts are blind to the identities of suspects, particularly confessors (Kassin et al., 2013). As we have discussed, forensic analysts too often bring biased findings to trial, as evidenced by the nearly omnipresent hair analysis errors made by FBI experts (Cates et al., 2015). Importantly, these errors are not equally distributed; FBI experts, likely unintentionally, systematically favored the prosecution in nearly every documented error (Cates et al., 2015). Additionally, as we have seen, in a sample of exonerated defendants, the presence of a confession substantially increases the likelihood of forensic errors, particularly forensic analyses that follow the confession (Kassin et al., 2011). These biases remain extremely pervasive, but they are also preventable.

There exist ineffective methods to address forensic biases. Some scholars and courts have recommended cross-examination of analysts to reveal bias (see Mnookin & Kaye, 2012; see *Marshall v. People*, 2013,

for a Colorado Supreme Court case in which justices encouraged cross-examination). Yet, as argued by legal scholar John Raphael Peña Perez (2014), confirmation bias is not intentional, and analysts are likely to speak truthfully when they say that do not have conscious biases, even if their self-perceptions are wrong.

We strongly encourage police departments and others to embrace blind testing protocols, such that the analyst does not know the origin or identity of the sample under review. These protocols are standard across scientific disciplines, largely due to substantial failures of scholars to recognize and reduce their own biases (see Gould, 1981; Winston, 2003; Woody, Ropp, Miller, & Bayes, 2016, for examples of egregious failures to mitigate researchers' biases in psychological science). These are not simply protocols for science. We use blind testing procedures to evaluate pharmaceuticals and even wines so that the researcher or taster does not know the identity of the sample; this knowledge affects observers no matter how much they strive to remain impartial (Stuart, 2010). We join the American Statistical Association (2010) and others in recommending blind testing for forensic analysts. These revisions, similar to the revisions to procedures associated with confirmation bias, have the potential to reduce confession-related biases in the corroboration process and in turn to reduce the potential for false confessions to become mistaken convictions. These reforms also carry the potential to improve public trust of law enforcement and to allow prosecutors and others to defuse claims of biased testing.

Reforming Interrogation Tactics

We recommend many changes to interrogation tactics, particularly surrounding deception, changes we review extensively below. We also recommend other revisions. We now propose reforms to specific tactics that raise substantial concerns.

REMOVING DECEPTIVE TACTICS

A fundamental reform we have promoted throughout this book is the elimination of deceptive tactics during police interrogation. First and foremost, our concerns rest on the potential for coercion and the substantially increased risk of false confessions. Second, we have concerns

for all individuals involved (e.g., suspects, police, and prosecutors) who may face increased resistance from suspects who discover police lies as well as other difficulties. Third, the acceptance of deception from police is problematic given that we them expect to model honesty in nearly all other interactions with each other, the legal system as a whole, and the public. Fourth, deception brings difficulties in corroborating confessions and in identifying and rejecting coerced or false confessions. Finally, use of deception jeopardizes the actual and perceived integrity of the criminal justice system, particularly in some communities that may already have substantial questions about trust and law enforcement. As we have seen, complete removal of deception during interrogation may be impossible given that treating some suspects politely and respectfully can be deceptive, but this does not preclude the removal of deceptive tactics that include lies to trick the suspect about the severity of the crime, the existing evidence, or other details related to the offense.

We view the removal of police deception during interrogation as analogous to the removal of physical coercion from police departments from the 1930s to the 1970s. As we discussed earlier, the cultural shift from physically coercive interrogations to deceptive interrogations was a long and complex process that required input from several stakeholders. In the mid-twentieth century, courts began to reject confessions at trial if the police induced the confession with physical violence or deprivation. There was a journalistic outcry across the United States in newspapers, national magazines, and popular books, which in turn generated public criticism. Government investigations also guided these changes. As we have noted, the biggest push for reform came from within policing, with the advent of academies, promotion of the scientific aspects of crime prevention and detection, the development of new interrogation manuals that rejected physical coercion (Kidd, 1940; Inbau, 1942; Arter & Caputo, 1959), and the separation of employment from political patronage. There are resounding similarities as well as some important differences across the contexts of reform in the mid-twentieth century and ongoing reforms.

Today, some courts are examining tactics that have not previously raised questions. As noted earlier, due to concerns about police deception, appellate courts ordered new trials without inclusion of the confessions for both Adrian Thomas and Paul Aveni. A similar decision was

made in Arizona when Johnathan Doody's confession was excluded from his third trial related to the Buddhist Temple murders (Stuart, 2010). Also, as we have discussed, some courts have raised legal risks for officers. When an officer used a polygraph machine as an orchestrated scientific FEP in the hours-long interrogation of Jeffrey Deskovic, these tactics, among other deceptive and coercive factors, led jurors to award substantial damages to Deskovic (Bandler, 2014a, 2014b). As discussed previously, in *Sanchez v. Hartley* (2016), the Tenth Circuit Court decided that the officers' errors could constitute potentially reckless or egregious behavior; the court therefore removed the officers' qualified immunity and exposed them to lawsuits and personal financial liability.

Conversations we (the authors) had about the *Sanchez* case were enlightening for us. We discussed the dramatic lack of fit between the evidence and the confession. As we saw earlier, the police sought a 190-pound man in his 40s with brown hair and no visible tattoos, but they accepted the confession of a 130-pound 18-year-old with red hair and prominent tattoos covering both arms. As we discussed these and other issues, Forrest noted that such egregious errors by police may indeed constitute recklessness rather than negligence. Then, we considered cases in which police made similar or even more severe errors but did not face consequences (e.g., as in the Central Park Jogger case [Burns et al., 2013], the case of the juvenile false confessor in Oakland [Shipler, 2012], and Damon Thibodeaux's case [Innocence Project, 2018d]; see Woody, 2017). We were in the process of writing this book at the time, and, as is evident throughout this volume, we are deeply enmeshed in the false confession case literature. Each of us easily listed other cases in which police errors were as severe or more severe than with Sanchez but courts did not remove officers' immunity, consider damage awards, or take other legal steps. Although the *Sanchez* case set precedent only in the jurisdiction of the Tenth Circuit Court, officers thus appear likely to face increasing risks of similar consequences, and we expect courts to consider this case and others that are changing expectations and increasing legal and financial risks for police investigators.

These changing legal expectations, even in state and federal circuit courts rather than the U.S. Supreme Court, may lead to a review at the highest level, as several related cases eventually led to *Brown et al. v. Mississippi* (1936). Other similarities exist between today and the

mid-twentieth century. Many news, documentary, and other media sources are raising questions about interrogation and confession, particularly false confessions (e.g., Burns et al., 2013; Bikel, 2010), and some evidence exists to suggest that the public is becoming more aware of police interrogation and of some of the factors associated with false confessions (Mindthoff et al., 2018).

Some factors exist today that were absent in the mid-twentieth century, most notably DNA exonerations and a substantial body of scientific scholarship. As discussed earlier, the wave of DNA exonerations has eliminated the last substantive disagreements about whether false confessions occur. Additionally, the emergence of a large and diverse body of research, as discussed throughout this book, has changed the conversation. Scholars continue to fill the linkage of the pyramid (Kassin, 2008) between basic psychological science and the existence of known false confessions. In another important difference from the mid-twentieth century, 87.3% of the sample of experts in Kassin et al. (2018) had been asked to provide expert testimony in court on at least one occasion. Both the number of experts and the number of relevant trials in which they may testify appear likely to continue to grow. The experimental literature investigating interrogation tactics, as described earlier, has provided rigorous experimental and meta-analytic support for claims that previously rested on observations from the exceedingly rich but imprecise body of actual interrogation transcripts. This multifaceted and growing body of scientific literature is disseminated at universities as scholars teach, in courts as scholars serve as experts, and in the media as researchers interact with journalists, documentary makers, and others. Across a variety of studies, this body of research has demonstrated that police deception profoundly affects suspects, particularly by increasing false confession rates, and that triers of fact recognize deception but fail to protect suspects from the consequences of police deception.

We hope that the confluence of familiar factors from the mid-twentieth century (e.g., court decisions, journalism, public concern) can combine with new influences (e.g., DNA exonerations, the growing scientific literature, and a robust community of scholarly experts) to support the continued reduction and eventual removal of deception from police interrogation in the United States.

DECEPTION AND MIRANDA

We call for intervention from courts, legislatures, and police themselves regarding deception about *Miranda*. Due process and individual rights are *not* obstacles to successful prosecution; even Ernesto Miranda was convicted at trial without his confession. We encourage all officers to avoid minimization and other deception about *Miranda* (see APA, 2014) and to seek to correct suspects' potential misunderstanding of their rights. Although, as discussed previously, *Miranda* provides only limited protection for defendants, particularly those who falsely confess (Garrett, 2010, 2015; Leo, 2012), we recognize that *Miranda* warnings have become part of the national culture of the criminal justice system in the United States (*Dickerson v. United States*, 2000). We recommend that officers meet or exceed the requirements of *Miranda*, particularly given the changing legal landscape about deception, as discussed previously. Best practices include a thorough and careful reading of rights with all suspects on camera and in ways that fit the suspect's language skills and abilities. In off-the-cuff conversations, we recommend that officers "*Miranda* early and *Miranda* often"[3] and that officers seek support from mental health workers, translators, and others to ensure that suspects understand *Miranda* warnings and that any waiver is intelligent, knowing, and voluntary (*Miranda v. Arizona*, 1966). Although there are not explicit legal requirements for additional *Miranda* warnings after a break in the interrogation, or if the suspect is clearly free to leave, or if the suspect was initially questioned as a witness before spontaneously making a statement that reveals criminal involvement, we strongly recommend that officers strive to exceed current legal expectations.

These recommendations provide protection for officers as well. We expect defense attorneys to continue to become increasingly aware of deception in general and to become more likely to cross-examine officers about waivers and other issues related to a suspect's constitutional rights. Officers who provide consistent, clear, and early *Miranda* warnings appear less likely to have to approach judges for retroactive approval of *Miranda* waivers, to face challenging cross-examination at trial, or to earn a reputation in their local courtrooms for pushing constitutional boundaries.

MINIMIZATION AND MAXIMIZATION

We echo calls from the APA (2014) and others (e.g., Kassin et al., 2010; Leo, 2008; Woody et al., 2011) to eliminate deception about the moral or legal severity of the crime. As discussed earlier, these tactics increase false confession rates in controlled laboratory studies and are present in many proven false confessions. These forms of deception, particularly minimization, affect suspects powerfully. Appleby et al. (2013) found that many false confessions include minimization themes that appear to justify the crime the suspect did *not* commit. The ways that distortions about the severity of the crime pervade false confessions suggest that these tactics impact suspects' decisions to confess, their expectations about the consequences of confession, and the confessions themselves.

FALSE-EVIDENCE PLOYS

We oppose continued use of FEPs in police interrogation in the United States. Although FEPs, alongside minimization themes, are "staples of the Reid technique" (Kassin et al., 2018, p. 75) and have been and continue to be accepted by courts, we call for their removal from police interrogation. In contrast to the substantial body of scientific evidence and a related meta-analysis (Stewart et al., 2018), Inbau et al. (2013) claim that false confessions are caused not by FEPs but by other illegal tactics they assumed were used concurrently with FEPs. Based on experimental as well as archival evidence, their claim that illegal and coercive tactics must be present, but unrecorded, in nearly all highly controlled experimental studies *and* in all or most proven false confessions with FEPs is untenable.

Despite Inbau's (1957) historical claim that "the courts do not have the constitutional authority to police the police" (p. 1394), we call for courts to provide guidance for police interrogation by rejecting confessions induced by FEPs. As we have discussed throughout this book, although courts consistently emphasize the evaluation of the totality of the circumstances rather than the mere presence or absence of FEPs or other deceptive tactics, the foundational precedents that shape these evaluations emerged in the 1960s and earlier (e.g., *Frazier v. Cupp*, 1969). Historical context appears relevant; in the 1960s concerns about physical coercion in police interrogations remained paramount (Chafee et al., 1969), and deception continued to appear as a less coercive and more

publicly acceptable alternative to torture (Leo, 1992; Woody, 2019). Unlike today, courts in the 1960s did not have access to a large and growing body of scholarship or to a large and growing body of scientific experts willing and able to educate courts (Kassin et al., 2018), including judges as well as juries (Woody et al. 2018), about the consequences of FEPs. As reported by Woody et al. (2018), preliminary data suggests that judges recognize deception but perceive it through the lenses of court decisions from the mid-twentieth century rather than from current scientific perspectives. We call for an end to courts' acceptance of confessions induced by FEPs.

Beyond courts, we also encourage prosecutors to set expectations in their jurisdictions for nondeceptive police interrogations. We encourage defense attorneys to make known that they will challenge confessions induced by FEPs and other forms of deception and to introduce these ideas and related scientific findings to jurors, potentially with experts, opening or closing arguments, or cross-examination of police officers who continue to use deceptive tactics.

Although it may appear difficult at best to remove deceptive tactics from police interrogation rooms in the United States (see Starr, 2013), we encourage readers to consider the mid-twentieth-century transition from coercion to deception. The uses of physical coercion during police interrogation made it appear that these were "normal, if not inevitable aspect[s] of policing" (Leo, 1992, p 48; Bunn, 2007). Yet policing fundamentally changed. These changes required several decades of varied progress, but now physical coercion during police interrogation is rare. Additionally, as stated previously, the current change is supported by research and the scholars who generate the research, and both supports have the potential to expedite the removal of deception from police interrogation (see Heyl, 2013/2014; Kassin et al., 2010; Leo, 2008, Meissner et al., 2017; Woody et al., 2011).

Alternative Interrogation Methods

If we recommend the removal of deception from police interrogation, we should be ready to answer the obvious question: Without deception, which strategies should police use? We recommend that police seek continued education and training in tactics that are nonconfrontational

and nondeceptive. We embrace nondeceptive alternatives for humanitarian, ethical, and legal reasons, as well as to promote community trust of police and the larger criminal justice system, but primarily because these nondeceptive tactics are associated with greater diagnosticity—fewer false confessions and more true confessions.

Although detailed discussion of the available alternatives is beyond the scope of this book, several effective approaches have emerged in recent years and faced extensive assessment. These nonconfrontational and nondeceptive strategies share some common elements, and we review these common elements, their effectiveness, and the impacts of these reforms on confession rates in jurisdictions where these changes have occurred.

As noted by journalist Douglas Starr (2013), there is a growing movement to seek alternatives to the confrontational approaches that have dominated police interrogations in the United States since the mid-twentieth century (Leo, 1992; Woody, 2019). For example, PEACE (Preparation and Planning, Engage and Explain, Account, Closure, and Evaluation) was developed in 1992 in the United Kingdom in response to cultural outrage over high-profile coerced confessions (Schollum, 2017), and PEACE has now been used consistently in the UK for more than 25 years. Similarly, retired police officer Neils Nelson trains police interrogators in the United States to use a system he calls Rapport-Investment-Partnership (RIP) (Cavett, 2013). Several options exist for police in the United States to train in PEACE-inspired systems (Starr, 2013), and the High-Value Detainee Interrogation Group Research Program (HIG) has generated a mountain of scholarship aimed at developing and evaluating effective interrogation methods (see Meissner et al., 2017). In this review, we examine some common components of these methods.

Fundamentally, these methods emphasize rapport-building over confrontation. The central question about the impacts of rapport-building and open-ended questions in contrast with confrontational approaches has led to extensive research, including experimental research using the social cheating method (i.e., the Russano paradigm; see Russano et al., 2005), which can allow for comparisons of factually guilty and factually innocent suspects who are interrogated in rapport-building or confrontational ways. A series of field studies, experimental studies, and meta-analyses (e.g., Walsh & Bull, 2010; Narchet et al., 2011; Houston

et al., 2014; Meissner et al., 2014, respectively) have contrasted these approaches. Although confrontational methods increase the likelihood of both true and false confessions, nonconfrontational information-gathering approaches increase the diagnosticity of interrogation strategies (see also Meissner, Redlich, Bhatt, & Brandon, 2012; Meissner, Kelly, & Woestehoff, 2015; Swanner, Meissner, Atkinson, & Dianiska, 2016; Woestehoff & Meissner, 2018). The science aligns with commonsense perspectives. As Nelson claims, "if you're not somebody somebody wants to talk to . . . you're not going to get anything" (Cavett, 2013, p. 26). For these reasons, the HIG research program deeply investigated rapport, including the theory, practice, and methods for increasing the likelihood of cooperation and enhancing rapport with suspects (Meissner et al., 2017).

A second common characteristic of these approaches is the emphasis on open-ended questions and letting the suspect talk (cf. Chapter 2 review of interrupting denials and overcoming objections, Inbau et al., 2013). As one group of Canadian and American researchers argue, the nonconfrontational and less stressful nature of PEACE combined with the reliance on open-ended questions and other well-tested interview tactics (e.g., from the Cognitive Interview, Fisher & Geiselman, 1992) lead to better memory retrieval by suspects (Snook, Eastwood, Stinson, Tedeschini, & House, 2010; see Meissner et al., 2017; Memon, Meissner, & Fraser, 2010). Additionally, as Nelson notes, letting the suspect talk, even if the suspect is factually guilty and intentionally deceptive, invites the suspect to provide information that police can test against evidence that has already been acquired or will be sought later (Cavett, 2013). For truthful suspects, these approaches maximize the quantity and accuracy of gathered information that can be contrasted with known evidence. For deceptive suspects, the information can be compared to available evidence and used to identify lies, build evidence, and prepare for prosecution.

Another characteristic of these approaches is the strategic use of evidence. Throughout this book, we have addressed the risks of presenting evidence to the suspect in advance, which can contaminate and format the confession and increase the difficulties in identifying a false confession. As recommended by psychological researchers Pär-Anders Granhag and Maria Hartwig (2015), the Strategic Use of Evidence (SUE)

technique starts with the elicitation of an open-ended narrative from the suspect without descriptions of evidence from the interrogator and avoids contamination. The interrogator can then reveal evidence that could prompt the suspect to change their story to account for the evidence (Hartwig, Granhag, Strömwall, & Kronkvist, 2006). Studies suggest that suspects who learn about evidence against them may offer additional information and that when suspects learn in advance about the tactics used in SUE they reveal more information than uninformed suspects (Luke, Dawson, Hartwig, & Granhag, 2014; Luke, Hartwig, Shamash, & Granhag, 2015). Additionally, training in SUE can improve police officers' evaluations of whether suspects' statements are consistent or inconsistent with known evidence (Luke et al., 2016).

In addition to SUE, a series of other tools are emerging. As discussed earlier, analysis of behaviors to detect deception remains fraught with difficulties and potential biases. Strategic questioning strategies have the potential to improve deception detection (Vrij & Granhag, 2012; Vrij, Taylor, & Picornell, 2016) that can take officers beyond analysis of behaviors and the concomitant problems.

A final characteristic of PEACE and related approaches is the elimination of deception. As noted previously, in the UK, parliament passed the Police and Criminal Evidence Act in 1984 after high-profile coerced confessions led to negative perceptions of police, and the removal of deception was part of the effort to earn the trust of the British populace. At face value, the removal of deception raises questions. For example, Inbau and Reid (1967) argued that deception about evidence is essential for the success of many interrogations (cf. Inbau et al., 2013; Kassin et al., 2018). FEPs remain accepted by courts, even in the face of widespread and growing scientific concerns. How has the removal of deception affected the past quarter-century of police interrogations in the UK?

In response to this question, we find different answers based on different forms of evidence. John E. Reid & Associates, Inc. (2018d) argue that the removal of deception has led to an extensive reduction in the confession rates in the United Kingdom. To support their claim, they quote Detective Superintendent Sturgeon of the Police Service of Northern Ireland, who stated "these legal restrictions on interrogation have made it impossible to secure a confession or incriminating admission from a suspect" (Intelligence Science Board on Educing Information,

2006, as quoted by John E. Reid & Associates, Inc., 2018d, ¶12). Scholars, however, have taken different approaches. Rather than cite the perceptions of an individual detective, Milne and Bull (2001) studied confession rates before and after the implementation of PEACE and found that confession rates did not change (see also Kassin et al., 2010). Snook et al. (2010) found that confession rates in Western nations that use The Reid Technique (i.e., a confrontational technique) do not differ from confession rates in countries that use PEACE or related models.[4] As is evident from our consistent emphasis on scientific perspectives, we view data-based sources of evidence as substantially stronger than the perceptions of any single observer.

In addition to the data about outcomes, several sources attest to officers' positive responses to PEACE. Current Canadian practices include both The Reid Technique and PEACE (Snook et al., 2010). Todd Barron, a Canadian police inspector who has run PEACE training for years, recalls when these nonconfrontational and nondeceptive tactics were first introduced. He claims that officers were generally skeptical until the end of the first week of training, at which point they typically wondered, "Where was this 20 years ago . . . ?" (Barron as quoted in Tullis, 2016, ¶43).

Finally, we consider the historical implications of the tensions between confrontational approaches and PEACE. Much training of police officers in the United States omits or at least lags behind the available science. As noted by Meissner et al. (2017), the scientific scholarship has grown tremendously, and several nations have moved to less confrontational and more effective interrogation approaches, but the United States has changed little. We strongly encourage police interrogators and those who train them to invite and embrace the rapidly growing science into their interrogation practice. Although Kassin (see Starr, 2013) stated that he believes confrontation is too deeply rooted in the police interrogation culture in the United States to be removed, we remain optimistic that these changes are possible. As we have noted, Inbau and Reid joined Kidd (1943), Arter and Caputo (1959), and others as progressive reformers in the mid-twentieth century. They challenged the deep-seated coercive interrogation practices of their day by replacing them with deception. We encourage officers to seek training in nondeceptive and nonconfrontational methods to improve diagnosticity,

build trust with their communities, and ease their experiences during cross-examination. We encourage officers to take steps that would enable them to face an aggressive defense attorney and reply as follows: "Yes, I am aware of the costs and consequences of confrontational and deceptive interrogation tactics as well as the risks of contamination and formatting through presentation of evidence. These factors guided my decisions to interact with the suspect honestly and respectfully, to use the best available nonconfrontational tactics, and to withhold relevant evidence until the suspect had voluntarily provided a narrative. What other questions do you have?" We hope that this book will inspire officers to seek additional training for the success and protection of the officers themselves, suspects in their interrogation rooms, and the integrity of the criminal justice system.

Legal Changes

We recommend several legal changes surrounding interrogation and confession. Some of these changes require legislative action and others could be accomplished by judicial action. After examining existing legal requirements for corroboration, we review the Ofshe-Leo test as a method to ascertain a confession's reliability (see Leo et al., 2013). Next, we recommend revisions to the standard of proof required to admit a disputed confession at trial. We conclude this legal review with recommendations for statutory changes to create reliability hearings in cases of disputed confessions (Leo et al., 2006; Leo et al., 2013; Woody, 2017).

Standards for Corroboration

As has been discussed, states may use the trustworthiness standard, *corpus delicti*, or alternative blends of these standards to guide the corroboration of confessions and guide the admission of confessions at trial, and several states have recently revisited these standards. As noted by Kassin et al. (2010), neither the trustworthiness standard nor *corpus delicti* provides substantial protection to defendants, and collections of proven false confessions (e.g., Garrett, 2010) include many examples of false confessions admitted at trials under both standards. Although

neither standard provides substantial protection for suspects who confess falsely to actual crimes (see Kassin et al., 2010), we encourage court and legislative support for *corpus delicti*. The substantially increased flexibility of corroboration that comes with the trustworthiness standard brings additional risk, particularly given the ways that corroboration of confession evidence may appear independent of the confession even when it is not, as discussed earlier. These risks are most severe for innocent suspects, but the related risks are already substantial for police officers and appear likely to become more so (Woody, 2017).

We join others (e.g., Leo et al. 2006, 2013; Woody, 2017) in our support for use of the Ofshe-Leo indices to corroborate confessions. As emphasized earlier, substantial social and cognitive barriers exist to accurate evaluation of the fit between the confession and the evidence. The Ofshe-Leo test provides three identifiers for factual confessions. First, does the confession lead police to previously unknown evidence? Second, does the confession include atypical details of the crime that have been kept out of the public eye? Third, does the confession contain mundane details of the crime that have been kept out of the public eye and would be difficult to guess? These criteria can assist police in diagnosing or separating factual from false confessions.

As we call for these standards, we also note the limitations, particularly with the second and third criteria. For example, Timothy Masters knew crime details that were atypical and difficult to guess, but he learned these details from a classmate who had helped police search the crime scene. Members of the Beatrice Six knew details of Helen Wilson's apartment from a video of the scene. Similarly, Bloodsworth's apparent knowledge of the atypical murder weapon increased later police interrogators' confidence in his guilt, even if he learned this detail from the first team of police interrogators. The most likely way that suspects may appear to have specialized knowledge of the crime is when they learn crime details, intentionally or unintentionally, from interrogators (Garrett, 2010, 2015; Trainum, 2007). Despite these practical limitations, we recommend that courts, prosecutors, and defense attorneys join police in establishing expectations that the confessions investigators bring to trial have corroboration from a wide and deep body of supporting evidence that meets relevant legal standards and the requirements of the Ofshe-Leo test.

Admission at Trial

We reiterate calls from Pepson and Sharifi (2010) to increase standards of proof for the admission of disputed confessions at trial. They note that in *Lego v. Twomey* (1972) the U.S. Supreme Court failed to overturn a conviction which included a confession admitted by the trial court using preponderance of evidence as the standard of proof, thus leaving this standard in place as acceptable. As noted previously, in support of this decision, the court expressed confidence in jurors' abilities to recognize and reject false or coerced confessions, a claim from the early 1970s that is now shrouded in doubt due the proliferation of studies demonstrating that jurors generally recognize but do not reject coerced confessions. Because scholars have consistently found that jurors cannot meet the expectations of the court, we encourage revision of this standard. Despite our evidence-based concerns that jurors struggle to understand and use standards of proof (Kagehiro, 1990; Kagehiro & Stanton, 1985; Woody & Greene, 2012), the parties involved in a suppression hearing for a disputed confession (i.e., prosecutors, defense attorneys, judges, and potentially experts) appear more likely to understand and use standards of proof appropriately. Therefore, similar to our call for stronger corroboration standards via the Ofshe-Leo test, we recommend higher standards of proof to admit a disputed confession at trial. The consequences are stark because "confessions exert a strong biasing effect on the perceptions and decision-making of criminal justice officials and lay jurors alike, tending to define the case against a defendant and usually overriding any contradictory information or evidence of innocence" (Leo et al., 2013, p. 772). Therefore, Pepson and Sharifi (2010) argue that "raising the burden of proof should be viewed as a constitutional imperative" (pp. 1243–1244). Pepson and Sharifi (2010) recommend raising the standard of proof to either the clear and convincing standard or the beyond a reasonable doubt standard. Both of these higher standards recognize the power inherent in confessions.

Expert Testimony

Despite the conflicting findings discussed in prior chapters, we recommend expert testimony as a method to educate the court. As discussed

earlier, expert testimony about interrogation and confession appears to readily meet the requirements of the *Daubert* and *Frye* standards, and expert testimony impacts both jurors and judges. Even judges as expert legal decision makers perceive interrogations differently after expert testimony (Woody et al., 2018). Importantly, many current judges completed their law school education before the waves of interrogation scholarship grew in the 1990s, and more senior judges are unlikely to have studied these issues during their legal education. Expert testimony also has the potential to shift the larger legal conversation in other ways. First, as more experts testify in more courts, more judges, attorneys, and jurors, among others, will be exposed to widely recognized scientific findings about interrogation and confession (Kassin et al. 2018), an influence that was not present in the mid-twentieth-century transition from physical coercion to deception. Second, increased expert testimony can continue to publicize what we call a "fundamental disconnect" concerning interrogation tactics (Woody et al., 2018, p. 15): courts' ongoing acceptance of confessions induced by FEPs exists in tension with the widespread recognition among scholars, based on archival cases and the experimental literature, that FEPs increase false confession rates. We encourage justices to recognize the widening gap between the assumptions of *Frazier v. Cupp* (1969) and experimental research, archival findings from actual cases, and the strong consensus of experts. Third, we remain optimistic about successful interventions in the forms of instructions from the court (Jones & Penrod, 2017; O'Donnell & Safer, 2017) and expert testimony (Gomes et al., 2016). We expect these productive methods will allow triers of fact not just to recognize but also to reject coerced confessions.

Courts

We hope that this book can contribute to the substantial and growing body of scientific evidence about risks in the totality of the circumstances surrounding interrogation and confession. Courts contributed substantially to the move away from physically coercive interrogation tactics in the mid-twentieth century, and we envision a similar role for courts today. We strongly encourage continuing education for trial, appellate, and other justices. We also encourage courts to take a range of additional steps.

First, even if *Lego v. Twomey* (1972) allows the use of preponderance of evidence, we encourage legislation to raise the standard of proof for admission of a confession at trial. We also encourage eventual appellate, state supreme, or United States Supreme Court review of standards of proof for admission at trial. Second, courts should separate relevant decisions about arrest and search warrants from later evaluations of evidence and corroboration. Third, we encourage courts to provide instructions for jurors to maximize their sensitivity to potential problems with confession evidence (Jones & Penrod, 2017; O'Donnell & Safer, 2017). Courts could draw language from the Uniform Law Commission cautionary jury instructions[5] intended for use when officers violate statutes by failing to record an interrogation (see also Taslitz, 2012 for modified sample instructions). In addition to these revisions to courts, we also recommend statutory changes for states.

Statutory Changes

Miranda warnings are a safeguard with limited effectiveness. Concerns about the validity of *Miranda* waivers generally lead to suppression hearings that rest on questions of voluntariness rather than on the veracity of the confession. These issues are compounded when there is not a videorecording that would enable assessment of potential contamination and formatting of the confession. As discussed earlier, contamination can make the confessor appear to have inside knowledge of the crime, which in turn appears to provide evidence to courts about the voluntariness and the admissibility of the confession (Leo et al., 2013). Garrett (2010) therefore calls the failure to hold reliability hearings "perverse" (p. 1110). Garrett (2010) demonstrated that voluntariness hearings overwhelmingly led to the admission of the confession at trial (a high likelihood compounded by the low standard of proof) for nearly all of the defendants in his sample of proven false confessions. Due to limitations of typical jurors and other observers, admission of the confession at trial dramatically increases the likelihood that a false confession evolves into a mistaken conviction.

To address these shortcomings as well as other failures of corroboration discussed earlier, we promote calls from Leo and colleagues (2006, 2013) for reliability hearings in addition to or in place of voluntariness

hearings (see also Berger, 2008; Taslitz, 2012; Thomas, 2007). Simply stated, a confession may be voluntary but false or otherwise unreliable. Without a formal procedure to evaluate reliability, the truth-value of a confession becomes a question faced only by the trier of fact (Leo, 2012), and we have seen the inherent difficulties faced by jurors attempting to answer this question. Leo and colleagues (2006, 2013) recommend that states require video-recording and join statutory requirements for recording with statutory requirements for reliability hearings that could align with voluntariness hearings. How would reliability hearings work?

Leo et al. (2013) provide recommendations and model statutory language, both of which emphasize the importance of reliable confessions and maintain the fact-finding mission of the jury. If reliability hearings become the de facto venue in which courts adjudicate confessions, the importance of these hearings may eclipse the role of the trial itself. Therefore, Leo et al. (2013) recommend that the defense carry the burden of raising questions about the reliability or accuracy of a confession to initiate the reliability hearing. The defense would have to argue that evidence of contamination, failure to corroborate the confession, or other problems justify a hearing. Then, as in voluntariness hearings, the prosecution would carry the burden of proof regarding the confession's reliability. Leo et al. (2013) recommend that prosecutors must prove by a preponderance of the evidence that the confession is reliable, and they recommend this low standard of proof for the reasons described previously. The prosecution would have to argue for admission by corroborating the confession according to the Ofshe-Leo indices or similarly strong evidence. An important addition to the model statutory language, similar to statements in statutes about eyewitness testimony and other evaluations of evidence, is the emphasis on considering findings from future scientific research (Leo et al., 2013). Additionally, despite potential fears that these hearings would proliferate, costing substantial time and money, Leo et al. (2013) argue that "it would be the rare case—perhaps a case built exclusively on a confession, with little or no corroboration, and evidence of errors and contamination—that would lead a court to exclude a confession" (p. 808). We support these options and recommend only one change. Although we share the concerns that prompt Leo et al. (2013) to recommend preponderance of the evidence as the standard of proof, we have such concerns about the power of

confessions at trial that we encourage legislators to consider stronger standards of proof, such as clear and convincing evidence.

Beyond these statutory changes, we also recommend revisions suggested by author and legal scholar Gary L. Stuart (2010), who proposed "a bolder, systemic solution" (p. 293). Stuart cited proposals by Louis J. Brandeis—before Brandeis's time on the U.S. Supreme Court—to create a counsel for the situation whose duties involved protecting the larger process and *all* parties. Stuart (2010) proposes a "counsel for the interrogation" (p. 294), who is not a representative of the prosecution or the defense. This counsel would serve the police by providing support in identifying guilty suspects and serve suspects by ensuring that suspects understand *Miranda*, interrogation tactics are not coercive, and video-recording requirements, among others, are followed. This individual's primary responsibility would be to the constitution and society at large by protecting the fairness of the interrogation. Attorneys criticized Brandeis for his challenge to traditional legal roles when he promoted a system in which the attorney's duty is to the situation rather than the client, criticisms that appear likely to re-emerge today (Stuart, 2010; Hazard, 2004). Although such a proposal brings likely high costs and faces a difficult legal road, the stakes are so high that we support these options as part of the larger conversation.

Conviction Integrity Units

Throughout this book we have emphasized the human nature of the criminal justice system as well as the psychological and related factors that shape the totality of the circumstances surrounding interrogation and confession. We support the efforts of those seeking to evaluate factual guilt, such as the Innocence Project (2018h) and others. Although this conclusion presents several recommendations to reduce the frequency of false or coerced confessions and the likelihood that these confessions will lead to mistaken convictions, these are inherently human endeavors, and errors remain inevitable. What steps can jurisdictions take to reduce these unavoidable errors?

We recommend the creation of conviction integrity units in district attorneys' offices to examine claims of factual innocence (Malavé & Barkai, 2014). These units seek not to raise technical or procedural legal

questions about a conviction but to evaluate claims of innocence based on new evidence such as newly discovered or newly testable DNA. These units have begun to proliferate across the United States, including in the office of the United States Attorney for the District of Columbia (Machen, 2015; see also Cook County State's Attorney, 2018). Many of these units investigate claims of false guilty pleas as well as erroneous convictions (Byars, 2018), particularly because those who plead guilty typically waive their rights to appeal (Woody et al., 2018). We strongly endorse this broad emphasis on innocence. If we do not look for errors, we are not likely to find errors. Given the inevitability of mistakes in these human undertakings, we as the public should expect prosecutors to search for potential errors.

Recommendations for Scholars

Throughout this book, we have identified topics that would benefit from additional study, and we note only a few here. Although the scientific study of interrogation and confession has made tremendous strides in recent years, we recommend additional scholarship with multiple methods, including case studies, correlational studies, and experimental research. First, we echo calls for greater collaboration between scholars, police interrogators, and those who train them (see e.g., Meissner, Hartwig, & Russano, 2010; Woody et al., 2010). This collaboration appears more likely in Canada than in the United States (see, e.g., Snook et al., 2010), and we covet these opportunities.[6] Second, we recommend systematic replication and extension of existing studies. Even paradigms that have been criticized can improve our knowledge; for example, replication and extension of ALT-key studies can lead to better understanding of confessions when there are allegations of negligence. Third, we encourage the ongoing search for novel methods that provide realistic interrogation analogues while maintaining ethical protection of suspects (see Stewart et al., 2018). Finally, we encourage scholars to extend scholarship into new methods and topics, including civil juror decision-making about confessions in fraud and loss interviews, which have led to documented false confessions and related lawsuits against employers (Elbein, 2014; Woody, Grogan, Albo, & Staut, 2016).

As we have discussed, scholars have greatly improved the scientific knowledge about vulnerable individuals, including those who are vulnerable in multiple ways. We encourage similar research into characteristics of interrogators. What trait (e.g., anxiety, consistent pro-guilt biases) or state (e.g., high cognitive load, fatigue, etc.) characteristics of interrogators lead to more or less confrontational interrogations or to more careful evaluations of confession evidence? How do types of crime, forms of evidence, and identities and behaviors of suspects shape police interrogation decisions? We also call for studies of the interactions between the suspect and interrogator, particularly as they influence each other to produce a confession, sometimes a false confession, that both of them accept. Meerloo (1956) investigated this relationship in coercive interrogations of POWs, and his psychoanalytic perspective (e.g., he calls this "the mysterious masochistic pact," p. 88) is rich and detailed but less amenable to research in the new millennium. We call for systematic investigation of these complex social interactions.

As we have noted throughout this book, active gaps exist in the research. Here, we use the notion of active gaps the way that this idea was used by historical psychologists Wolfgang Köhler (1938) and William James (1890/1981): to describe the awareness of a missing thought or idea that strongly demands our attention. As we have throughout the book, we invite scholars to consider individual factors that shape interrogation and confession, interactions between these factors, and the larger picture of the totality of the circumstances.

Final Recommendations

As is evident throughout this work, the science of police interrogation and confession continues to expand rapidly. We call for increased discussion among scholars and police and other interrogators. We encourage active scholarly collaboration between these parties, opportunities that remain rare in the United States.

Although both authors of this text have engaged in expert evaluation of interrogations and confessions, we have sought and continue to seek opportunities to educate police officers and recruits, among others. In our experiences, we have found that they want what we want: accurate, detailed confessions from factually guilty suspects and confessions

that stand up under rigorous legal review, are admissible at trial, and lead to guilty verdicts. We hope that readers can better recognize and understand individual factors that guide confessions, particularly false confessions, as well as the interactions between these factors and the larger totality of the circumstances. We hope that this book provides valuable worldviews, legal and scientific perspectives, and tools to police officers, prosecution and defense attorneys, trial, appellate, and other judges, and the journalists and public who evaluate confession evidence and the criminal justice system as a whole.

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NOTES

FOREWORD

1 Florida v. Harris, 133 S. Ct. 1050, 1055–56 (2013).

INTRODUCTION

1 Some scholars dispute this account. McFarland argues that the Boorn brothers murdered Colvin, hired an imposter to play the role of Colvin, and thus escaped conviction and execution (McFarland, 1993).

CHAPTER 1. HISTORICAL DEVELOPMENTS IN POLICING AND THE PRACTICING OF INTERROGATION

1 Throughout this text, we use *they*, *them*, and *theirs* as singular pronouns to include people whose gender identities fall outside of the binary categories of men and women; these conventions reflect recent advances in psychological science (Hyde, Bigler, Joel, Tate, & van Anders, 2019) and of the practice of law (Clarke, 2019).

2 Anecdotally, I (Woody) have asked university students in my senior-level Seminar in the Psychology of Interrogation and Confession to engage in a hypothetical role-play in which student volunteers play the role of the police supervisor of a new officer who has just conducted his first interrogation. I ask them to imagine what they would say after they observed the video-recording of his first interrogation in which he, a European American police officer, repeatedly tied and retied a "hangman's knot" while interrogating an African American suspect. Students' impromptu responses included "he destroyed our investigation," "he's fired," and, the most important negative result of coercive interrogation practices described by Kidd (1940), "he has risked or destroyed our reputations as individual officers and supervisors, as a police department, and as police officers in our state."

3 In my senior-level Seminar in the Psychology of Interrogation and Confession, I (Woody) have asked students to identify the most important scholar of interrogation they have studied during the semester. Many students choose Inbau, even if they reject his emphasis on trickery and deception, because of his strong ethical foundations against physical coercion and the powerful voice for reform that he provided when practitioners still had to warn police investigators not to use force or to threaten suspects explicitly with personal or mob violence.

4 These cases have limited reach. The *Ulmer v. The Home Depot, Inc.* (2007) does not set precedent that binds other federal courts; *Robles v. Autozone* (2008) is unpublished and does not alter case law, even if it provides clear cautions to fraud and loss investigators and those who employ them.

CHAPTER 2. THE CURRENT NATURE OF POLICE INTERROGATION

1 A suspect's acquiescence can lead to interrogator frustration and subsequent questioning that provides information to the suspect, sometimes including details only known by police and by individuals who witnessed or committed the crime. These strategies can contaminate the confession and cause substantial difficulties in corroborating the confession.

2 In the final chapter, we make recommendations for police facing a vulnerable suspect.

3 As we discuss later, the suspect's knowledge of the crime can, under different circumstances, provide additional evidence about the suspect's guilt or innocence.

4 The dates here are approximate. U.S. Marines landed at Da Nang in 1965. We note that producers Ken Burns and Lynn Novick (2017) trace U.S. involvement in Vietnam to 1959–1975. Additionally, in related scholarship of interrogation and confession, sociologists Albert D. Biderman and Herbert Zimmer (1954) interviewed U.S. Air Force enlisted personnel who had been captured and held by the Viet Minh immediately after the armistice with the French, suggesting that U.S. personnel were in Vietnam and available to be captured in 1954.

5 We examine jurors' and judges' perceptions of interrogations and confessions in Chapter 7.

6 We return to interrogators' on-the-job-training and related issues later in this chapter.

7 Rhodes, Kling, Luallen, and Dyous (2015) also found that these racial sentencing disparities increased 2005–2012.

8 Interrogation trainers and authors Bryan C. Jayne and Joseph T. Buckley (2017) state that confrontation should be used "only in cases where the suspect's guilt seems very clear" (p. 11). However, human cognitive biases increase the difficulty of enacting this recommendation.

9 This finding is particularly important in this case because, first, the court found that officers regularly intentionally withheld *Miranda* warnings until after suspects confessed, and, second, the court found that a national training organization promoted this practice, including in their 2001–2003 manual (*Missouri v. Seibert*, 2004). We thank Kevin Y. Reinholz, Esq., for drawing these details from this case.

10 In the Seminar in the Psychology of Interrogation and Confession, students asked an experienced police interrogator if he ever doubted a suspect's guilt at this phase of the interrogation. He replied by saying "never in the room"; he claimed that he may express doubt to other officers outside the room as they observe the suspect

and the interrogation, but he recommended against showing any doubt about guilt to the suspect (Anonymous police interrogator, March, 2015).

CHAPTER 3. DECEPTIVE INTERROGATION TACTICS

1 This could include evidence evaluated by a competent forensic analyst who is blind to the identities of the individuals who provided the samples, as recommended subsequently.

2 This assumption also reflects truth bias, the general assumption that speakers are being honest rather than dishonest (see Zuckerman et al., 1981; Levine et al., 1999).

3 We recommend strong, clear presentation of *Miranda* warnings to suspects as early as possible in the process of detention and interview.

4 Police may also use these tactics before entering the room: during arrest or transit, or while standing outside of the room and outside of the view of potential cameras inside the room (Anonymous Police Interrogator, personal communication, March, 2015).

5 In class, an anonymous police interrogator (March, 2015) suggested the following statement to a suspect. "Your partners are talking to us and blaming you. Don't you want to tell your side of the story?" The interrogator did not explicitly tell the suspect that the suspect would benefit from confessing or suffer from failing to confess, but the implicit promise and threat are clear.

6 As noted in Chapter 2, police may mistakenly believe that they can accurately evaluate a suspect's guilt based on their behaviors. In this context, errors in behavioral deception detection do not constitute a demeanor FEP. A demeanor FEP occurs when police believe either that they cannot accurately evaluate the suspect's behavior or that the suspect's behavior indicates truthfulness but police claim, contrary to their perceptions, that the suspect's behavior or appearance indicates guilt. Similarly, police may overstate their confidence in the suspect's guilt or even state that they are completely certain that a suspect's behavior indicates guilt.

7 Participants engaged in a computerized gambling task on camera, taking money from a source each time they won (with a prominent green check mark on their computer screen) and returning money to that source each time they lost (with a prominent red cross on their computer screen). To generate their orchestrated FEP, researchers doctored the video to change the image on the computer screen. Therefore, in the fabricated evidence condition, participants observed video evidence of themselves taking money as a red cross appeared on the computer screen.

8 To clarify, we view these deceptive uses of the polygraph as an orchestrated scientific FEP as distinct from using actual polygraph results to inspire a guilty suspect to confess (as recommended by Lee, 1953), even as we note that polygraphists may err and, despite honest intentions, identify an innocent suspect as guilty. We consider inconclusive polygraph results below.

9 See also Shaw and Porter (2015) for a study in which interviewers induced rich and detailed false memories of crimes in innocent participants.

10 Sargant (1957) described a similar strategy from physically coercive communist interrogations in the early Cold War. Rotating interrogation teams of interrogators worked with prisoners who were prevented from sleeping. As one survivor stated, even among innocent prisoners who withstood torture, he knew of only one person who did not confess falsely in "the conveyor" (1957, p. 210).

11 J. T. Perillo, personal communication, March, 2010; S. A. Woestehoff, personal communication, September, 2013.

12 In the Seminar in the Psychology of Interrogation and Confession, a former police interrogator compared this to deceptive sales tactics. He noted that a salesperson (i.e., the good salesperson in this example) provisionally agrees to the buyer's terms but then states that they must seek approval from a supervisor (i.e., the bad salesperson). The salesperson then returns dejected to say that the supervisor refused the terms and that therefore the customer must offer more.

CHAPTER 4. FALSE CONFESSIONS AND THEIR CAUSES

1 In one role, Price was a psychologist who would seek to help them and would be bound by confidentiality and other ethical guidelines. In the other role, he served as a police detective who sought their confessions and convictions.

2 These are also considered by many to be more serious crimes that may inspire police to go further than usual when interrogating suspects.

3 Several reasons exist to doubt this claim or to attribute it to what Lech (2011) called "[M]arine bravado" (p. 73). Interrogators made Schwable sit or stand in stress positions for extended times, endure chronic cold and untreated, extremely painful injuries, and suffer other physical privation that contemporary observers view as torture (cf. Brennan et al., 2013/2014; Hoffman et al., 2015; Senate Select Committee on Intelligence, 2012).

4 The fabricated scenario appeared similar to other crimes to which Ingram had confessed. Ofshe falsely claimed that Ingram had forced his son and daughter to engage in sexual relations while he watched (see Loftus, 1993, p. 533). This fits with the other crimes to which Ingram confessed and provides additional evidence about the heinousness of the crimes to which Ingram confessed.

5 We return to these and related findings later in the book.

6 Interactions with Bloodsworth were now contaminated; he now had knowledge that appeared to indicate his guilt, even though he learned these facts from interrogators.

7 Despite these cautions, Kostelnik and Dickon Reppucci (2009) found that, compared to officers who had not been trained by John E. Reid & Associates, Inc., officers trained by John E. Reid & Associates, Inc., were less aware of developmental differences between children and adults, more likely to perceive children as legally

competent, and more likely to endorse deception, including FEPs, with juveniles (see also Cleary & Warner, 2016).

CHAPTER 5. COSTS AND CONSEQUENCES OF DECEPTION, COERCION, AND FALSE CONFESSIONS

1 As is evident throughout this book, the data clearly demonstrate that *Miranda* does *not* provide sufficient protections or limit the risk of false confessions.

2 Although Evig (2013) cites this case positively as an example of the effective application of the trustworthiness standard, the Oklahoma Innocence Project has argued that Fontenot confessed falsely and is factually innocent (Innocence Project, 2013) and that the discrepancies between his confession and the evidence demonstrate his innocence.

3 Former detective James Trainum (2007), Leo et al. (2006), Garrett (2010, 2015), and others note that a complete video-recording is required to detect contamination, but, as discussed subsequently, a recording alone cannot prevent conviction of the innocent.

4 For example, when innocent 15-year-old Timothy Masters knew the victim's body had been mutilated, investigators viewed this as evidence of his guilt. Police had kept this detail out of the news. How could this child have known this detail if he were not the perpetrator? The police had sought support from an Explorers group of high school students to search the field where the victim's body was found and had informed the Explorers that they sought specific body parts. A member of the Explorers group relayed this information to classmates in Masters's high school. In this way, Masters learned this detail that police believed had remained secret. Masters's knowledge of this supposedly hidden detail became part of the case against him (see Masters & Lehto, 2012).

CHAPTER 6. EXPERT TESTIMONY

1 See Cold War interrogation scholars Meerloo (1956) and Sargant (1957) for similar arguments.

2 Kassin et al. (2018) note that 99% of their experts emphasized the educational role and that the single participant who did not select that option selected *other* and wrote a description of the educational role (p. 74).

3 Experimental expert testimony involves reviews of the scientific literature about the causes of false confessions. It is less likely for experimental experts (e.g., in a suppression hearing) to give testimony about a particular defendant or confession. This varies with the expert and the case.

CHAPTER 7. SAFEGUARDS

1 Using slightly different assessments, Jones and Penrod (2016) and Horgan et al. (2012) found that participants rated the likelihood of their own false confession as low.

2 Anecdotally, when students in the Seminar in the Psychology of Interrogation and Confession hear these confessions, students consistently use the word "monsters" to describe the confessors. Even these advanced students typically fail to recognize the exhaustion and other effects from hours of intense interrogation (Wells & Leo, 2008) and embrace the fundamental attribution error.
3 In the Conclusions and Recommendations, we recommend raising this standard of proof for admission of a confession at trial.
4 These individuals depicted in the study were men.
5 Jones and Brimbal (2017) also found similar effects for participants who more strongly endorse right-wing authoritarianism (Altmeyer, 1981), which includes submission to legitimate authorities, aggression against those who violate social norms, and adherence to conventional traditions and norms.

CONCLUSIONS AND RECOMMENDATIONS

1 As discussed previously, the U.S. Supreme Court rejected Leyra's confession after it was found to have been induced in part by a police psychiatrist who falsely claimed to be an independent physician brought in to treat Leyra's sinus condition.
2 We thank Kevin Y. Reinholz, Esq., for this suggestion.
3 We make this recommendation to protect suspects and officers from the consequences of omitted *Miranda* warnings, even though Rogers, Fiduccia, Robinson, Steadham, and Drogin (2013) found that repeated warnings do not help suspects and may paradoxically make some suspects more confident about their misconceptions. This recommendation incorporates recommendations for officers to address and reduce suspects' misconceptions.
4 See Gudjonsson (2003) for data suggesting that since the implementation of PEACE confession rates are slightly higher in the U.K. than in the U.S.
5 In his review of the Uniform Law Commission's recommendations, Taslitz (2012) criticizes the Uniform Law Commission for failing to recommend expert testimony.
6 We consistently seek these opportunities. We invite police interrogators to our university classes and provide academy education, continuing education, and/or research talks to police officers, district attorneys, defense attorneys, and others. We hope to have more collaborative opportunities in the future.

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